
(2017) 01 BOM CK 0032
In the Bombay High Court
Case No : Writ Petition No. 4 of 2007

The Gondwana Club

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 11-01-2017

Acts Referred:

Bombay Entertainments Duty Act, 1923 — Section 2(a), Section 3, Section 4

Citation : (2017) 2 BCR 820 : (2017) 2 MhLJ 561

Hon'ble Judges : Smt. Vasanti A. Naik and V.M. Deshpande, JJ.

Bench : Division Bench

Advocate : Shri H.V. Thakur, Advocate, for the Petitioner; Shri A.S. Fulzele, Assistant Government Pleader, for the Respondents

Final Decision : Allowed

Judgement

Smt. Vasanti A. Naik, J (Oral)—The petitioner challenges the proceedings initiated by the Entertainment Tax Inspector, Nagpur in pursuance of the notices demanding the entertainment duty to the tune of Rs.2,000/per month, per pool-table.

2. The petitioner "Gond wana Club" is a society registered under the Societies Registration Act. The object of the petitioner-Club is to provide for social entertainment and physical and mental recreation of its members. In furtherance of the said object, the petitioner-club provides facilities for games, sports and other amenities, as may be desirable for the achievement of the object. The petitioner-Club has a reading room, library, swimming pool, table tennis tables, tennis court, gymnasium as also billiards tables with which we are concerned. It is the case of the petitioner that the petitioner Club is run on the principles of mutuality that exclude the charge-ability of entertainment duty or tax under the Maharashtra Entertainments Duty Act. According to the petitioner Club, the facilities provided by the club are meant only for its members, as per the rules of the club. It is stated that monthly fees are paid by the members of the club as per rules. It is stated that only the members of the club, their guests and the

persons possessing service membership are entitled to avail the facilities provided by the petitioner Club. It is stated that though the billiards tables are meant for the physical and mental recreation for its members, the Entertainment Tax Inspector, Nagpur has served the impugned notices demanding entertainment duty of Rs.2,000/per month for each billiards table. According to the petitioner, the action on the part of the Entertainment Tax Inspector is bad in law and is liable to be set aside.

3. Shri Harish Thakur, the learned Counsel for the petitioner Club took this Court through the various provisions of the Act to point out that the Entertainment Tax Inspector had no jurisdiction to initiate the proceedings for recovery of entertainment duty on the billiards table by considering that the petitioner Club was operating a pool parlour. It is submitted that in view of the provisions of Section 3 of the Act, entertainment duty is payable to the State Government on payment, for admission fixed by the proprietor for any entertainment, as is provided under Section 3 of the Act, including a pool game. It is stated that on a reading of Section 3 of the Act and the definition of the term "entertainment" as also the terms "pool game" and "pool parlour" as defined in Sections 2(a) and 2(b1) and 2(b2) of the Act respectively, it is clear that the Entertainment Tax Inspector could not have demanded the entertainment duty from the petitioner Club. It is stated that entertainment duty could be chargeable for entertainment, that may include a pool game or a pool parlour, only when persons are admitted to the entertainment, on payment. It is submitted that the Entertainment Tax Inspector has charged entertainment duty by considering that the petitioner Club was running a "pool parlour" within the meaning of the term, as defined by Section 2(b2) of the Act. It is stated that a "pool parlour" would mean a place of entertainment wherein one or more tables are provided for playing a pool game, for which a payment is required to be made, in any manner or form. It is stated that the public at large is not permitted to use the billiards tables in the petitioner Club as they are meant for the recreation of its members only. It is submitted that if facilities are provided by the petitioner Club to its members on the principles of mutuality, entertainment duty cannot be levied under the provisions of the Act. A reference is also made by the learned Counsel for the petitioner to the provisions of Section 4 of the Act to point out that no person other than the person who has to perform the duty in connection with an entertainment or a duty imposed upon him by any law, shall be admitted to any entertainment except with a valid printed ticket or complimentary ticket, which would be for a fee. It is submitted that on a combined reading of the provisions of Sections 2(a), 2(b1), 2 (b2), 3 and 4 of the Act, it is clear that the petitioner would not be liable to pay entertainment duty on the billiards tables, provided by the petitioner Club exclusively for its members. The learned Counsel relied on the judgment of the Hon'ble Supreme Court in the case of M/s Geeta Enterprises and others v. State of U.P. and others reported in (1983) 4 SCC 202 and specially paragraph 12 thereof to canvass that only a show, performance, game or sport which contains a public colour, that is, when the show is open to public in a hall,

theatre or any other place where members of public are invited or attend could be "entertainment". It is stated that it is clear from the tests laid down by the Hon"ble Supreme Court in paragraph 12 of the said judgment that the facility provided by the petitioner Club to its members for playing billiards, without a fee or charge cannot be termed as "entertainment", thereby fastening the liability on the petitioner Club to pay entertainment duty under the provisions of the Act. It is stated that the Entertainment Tax Inspector could not have imposed the duty on the petitioner Club, specially when it is not the case of the Inspector that the petitioner Club is charging any fee or ticket for playing the game of billiards.

4. Shri A.S. Fulzele, the learned Additional Government Pleader appearing for the respondents has supported the action of the Entertainment Tax Inspector. It is submitted that the members of the club are required to pay the monthly charges for using the facilities and the pool parlour or the pool game facility provided by the petitioner Club could be termed as a facility, for which the members are admitted on payment. It is submitted that since the petitioner Club is operating a "pool parlour" where one or more billiards tables are provided for playing a pool game by charging its members, no fault can be found in the action of the Entertainment Tax Inspector of demanding entertainment duty of Rs.2,000/per month for the billiards table.

5. The word "entertainment" is defined by the provisions of Section 2(a) of the Act. The relevant provisions of Section 2(a) of the Act provide that entertainment includes any exhibition, performance, amusement, game or sport to which persons are admitted for payment. In the instant case, we are concerned with the pool game. Pool game is defined by Section 2(b1) which means a game played on a pool table or billiards table or any table by whatever name called. A pool game is played in pool parlour and according to the Entertainment Tax Inspector, the petitioner Club operates a pool parlour in the club and in the said pool parlour, the billiards tables are provided. Under Section 2(b2) of the Act a "pool parlour" means a place of entertainment wherein one or more tables are provided for playing a pool game for which the persons are required to make payment in some manner or form. It is apparent from a reading of the provisions of Section 2(a), 2(b1) and 2(b2) of the Act that for an entertainment including a pool game in a pool parlour, a person is required to be admitted only on payment in some manner or form. Section 3 of the Act, which is the charging section provides that entertainment duty could be levied and paid to the State Government for admission to entertainment, including the pool game entertainment. Section 4 of the Act provides for the method of levy of duty and it further provides that no person other than a person who has to perform some duty in connection with an entertainment or a duty imposed upon him by law, shall be admitted to an entertainment except with a valid ticket or complimentary ticket. On a combined reading of the provisions of Section 2(a), 2(b1), 2(b2), 3 and 4 of the Act, it is clear that entertainment duty could be levied only if the entertainment is provided on payment. It would now be necessary to consider whether entertainment is provided by the petitioner Club

to the public, on payment. It is not the case of the respondents that the billiards tables in the club are permitted to be used by the public on payment. It is also not the case of the respondents that the members of the club, for whose entertainment and recreation the billiards tables are provided, are required to pay separately for using the billiards tables. On a reading of the rules of the petitioner Club, it appears that only the regular members of the club, their guests, and the service members are permitted to use the facilities provided by the club. It is stated on behalf of the petitioner that the members of the petitioner Club mutually provide for themselves, certain facilities that could be exclusively used by them and are not available to the public, even on payment. As per the test laid down by the Hon'ble Supreme Court in paragraph 12 of the judgment in the case of M/s Geeta Enterprises (Supra) a show, performance, game or sport should contain a public colour, in that, the show should be open to public in a hall, theatre or any other place where members of the public are invited, or attend the show. The said test, as laid down by the Hon'ble Supreme Court for ascertaining whether a show, game or sport could fall within the legal connotation of the word "entertainment" as defined under the Act, is not satisfied in the circumstances of the present case as the billiards tables in the petitioner Club cannot be used by the public at large. The public is neither invited to use the tables nor is permitted to use them. The billiards tables are provided only for the members of the petitioner Club with a view to achieve the object of the club of providing social entertainment and physical and mental recreation. The Entertainment Tax Inspector has levied the duty on the premise that the petitioner runs a "pool parlour" in the club where the billiards tables are provided. Under Section 2(b2) of the Act, a pool parlour would be a place of entertainment where tables are provided for playing a pool game for which payment is necessary. It is not the case of the respondents that payment is made by the public for using the billiards tables for the pool game. The billiards tables in the petitioner Club would not be a game or sport to which persons are admitted for payment and hence, the same cannot be considered as entertainment for which duty is leviable under Section 3 of the Act, more so when the pool game or tables do not satisfy the tests as laid down by the Hon'ble Supreme Court in paragraph 12 of the judgment in the case of M/s. Geeta Enterprises (supra). Apart from the fact that the aforesaid game in the club does not contain a public colour, the further test that the exhibitor should derive some benefit in terms of money even if the admission to the hall is free, is also not satisfied as the club is not benefited in terms of money by the use of the billiards tables by the members of the club. We are not inclined to accept the submission made on behalf of the respondents that since the members are required to pay some monthly charges to the club, they are admitted for payment and the pool game in the club would be an entertainment, specially when the tests laid down by the Hon'ble Supreme Court are not satisfied and it is not disputed that the members of the club mutually provide the facilities to be used exclusively by themselves and the same are not made available to the general public, even on payment.

6. Since the action of the Entertainment Tax Inspector of initiating proceedings against the petitioner club for payment of entertainment duty is bad in law, the impugned demand notices are hereby quashed and set aside.

7. Rule is made absolute in the aforesaid terms with no order as to costs.