
(2004) 05 AHC CK 0078
In the Allahabad High Court
Case No : C.M.W.P. No. 732 of 2004

Vasantt Chitra Mandir and Another	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 31-05-2004

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 2004 All 425 : (2004) 3 AWC 2334

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : H.N. Mehrotra and P.S. Baghel, for the Appellant;

Final Decision : Dismissed

Judgement

M. Katju, J.—This writ petition has been filed for a writ of mandamus directing the respondents to extend the benefit of 100% exemption of entertainment tax for five years to the petitioner as has been given to the multiplexes by G.O. dated 12.11.2001 (Annexure-VIII to the petition). The petitioner has also prayed for a writ of certiorari quashing the G.Os. dated 12.11.2001, 17.1.2001, 9.1.2001 and 13.7.1999 issued by the State Government.

2. Heard learned counsel for the parties.

3. The petitioner No. 1 is a Cinema Hall held by a partnership firm, and petitioner No. 2 is one of its partners.

4. By G.O. dated 7.12.1998 the State Government offered three year tax concession under the U. P. Entertainment's and Betting Tax Act, 1979 for those cinemas which are situated in a town having more than 3 lacs population.

5. The petitioner is aggrieved by the G.O. dated 12.11.2001 granting 100% tax exemption for five years to multiplexes (Cinema complexes). The petitioner has alleged that the decision of the State Government granting 100% exemption on entertainment tax for five years to multiplexes is unreasonable, arbitrary and

discriminatory and hence violative of Article 14 of the Constitution.

6. It is alleged in para 17 of the petition that multiplexes are constructed in the big cities and they do not need any encouragement since the owners of the multiplexes are affluent and rich people who can afford to pay taxes. By offering 100% exemption to multiplexes, single screen cinemas like the petitioner who are at the brink of closure on account of accumulated losses have been singled out and subjected to hostile discrimination.

7. It is alleged that both the multiplexes and single screen cinemas belong to the same class and hence there cannot be different standards for imposing entertainment tax.

8. It is alleged that the petitioner and other single screen cinemas are paying huge amount of entertainment tax while the multiplexes have been given complete tax-holiday for five years. It is alleged that this amounts to discrimination.

9. After hearing the learned counsel for the petitioner and learned standing counsel we find no merit in this petition.

10. Although tax laws are also subject to Article 14 of the Constitution vide *Income Tax Officer, Shillong and Others Vs. R. Takin Roy Rymbai and Others*, , a larger discretion in classification is given to the Legislature in tax matters than in other matters vide *The Anant Mills Co. Ltd. Vs. State of Gujarat and Others*, ; *R.K. Garg v. Union of India* 1982 (1) UPTC 355; *Malwa Bus Service (Private) Limited and Others Vs. State of Punjab and Others*, . This is in view of the inherent complexity of fiscal adjustment of diverse elements vide *Income Tax Officer, Shillong and Others Vs. R. Takin Roy Rymbai and Others*, ; *Amalgamated Tea Estate Co. Ltd. v. State of Kerala* 1975 UPTC 89. A taxing statute is not open to attack on the ground that it taxes some persons or objects and not others vide *East India Tobacco Co. Vs. State of Andhra Pradesh*, . The State has a wide discretion in selecting the objects or persons that it will tax vide *Khyerbari Tea Co. Ltd. and Another Vs. The State of Assam*, and in order to tax something it is not bound to tax everything vide *Orient Weaving Mills (P) Ltd. Vs. The Union of India (UOI)*, ; *State of M. P. v. Bhopal Sugar Industries* AIR 1974 SC 1179. It can pick and choose objects, areas, persons, rats, etc. vide *V. Venugopala Ravi Varma Rajah Vs. Union of India and Another*, ; *Income Tax Officer, Shillong and Others Vs. R. Takin Roy Rymbai and Others*, . Thus, a house tax Imposed by a municipality only on Civil Lines Area is not invalid vide *Gopal Narain Vs. State of Uttar Pradesh and Another*, . Similarly, where the State Legislature selects two articles, which are the main products of the State, for taxation U is valid vide *Khyerbari Tea Co. Ltd. and Another Vs. The State of Assam*, . A tax imposed only on tea and jute is valid vide *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, . Imposition of tax on cane jaggery and exempting palm jaggery is not discriminatory vide- *T.G. Venkataraman, etc. Vs. State of Madras and Another*, . A tax law is not discriminatory merely because different rates are prescribed for

different items vide *Malwa Bus Service (Private) Limited and Others Vs. State of Punjab and Others*, .

11. Where a law provided that if the assessee sold to a person other than the Government at any time within 10 years in which the motor vehicles was acquired he would forfeit the rebate, but if he sold it to the Government he would not, it was held that there is no violation of Article 14. The assessee has a choice of selling it to the Government or to another person. The discrimination, if any, arises out of the choice of the person vide *Chittoor Motor Transport Co. (P.) Ltd. Vs. Income Tax Officer, Chittoor*, .

12. The classification of companies into domestic and foreign companies is valid vide *Amalgamated Tea Estates Co. v. State of Kerala* 1975 UPTC 89. So also is the classification between Virginia tobacco and country tobacco vide *East India Tobacco Co. Vs. State of Andhra Pradesh*, , and a classification between big manufacturers and small ones vide *British India Corporation Ltd. Vs. Collector of Central Excise*, . A classification of traders or shopkeepers selling gold ornaments for giving the benefit of exemption from sales tax to those who themselves work and produce the ornaments and those who are commission agents is valid vide *Epari Chinna Krishna Moorthy, Proprietor, Epari Chinna Moorthy and Sons, Berhampur, Orissa Vs. State of Orissa*, . Classification of tobacco into luxury and non-luxury categories is valid vide *East India Tobacco Co. Vs. State of Andhra Pradesh*, . An under inclusive provision in the Foreign Exchange Regulation Act was declared valid in *Supdt. and The Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Girish Kumar Navalakha and Others*, on the ground that the Legislature is free to remedy parts of a mischief or to recognize degrees of evil and strike at the harm where it thinks it most acute. In the same case the Supreme Court upheld the validity of the piecemeal approach in tax legislation vide *ibid*.

13. In *State of Bihar v. S.K.P. Sinha* (1995) 5 SCC 86, it was observed that greater latitude should be conceded to the Legislature or its delegate in matters of taxation, and the Court should not substitute its own opinion in such matters.

14. It may be mentioned that there is presumption in favour of the constitutional validity of a *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, ; *Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and Others*, ; *P.J. Krishnalal v. Government of Kerala* 1995 AIR SCW 1325 and *Jilubhai Nanbhai Khachar, etc. etc. Vs. State of Gujarat and another, etc. etc., , etc.*

15. In our opinion, single screen cinemas and multiplexes are different classes and hence Article 14 has no application. Thus, there is no force in this petition and it is dismissed.