(1990) 02 P&H CK 0034

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 4963 of 1989

V.P. Theatre APPELLANT

Vs

State of Punjab and Another RESPONDENT

Date of Decision : 27-02-1990

Acts Referred:
Punjab Municipal Act, 1911 — Section 242

Citation : (1990) 185 ITR 429

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

Bench : Division Bench

Advocate : H.S. Bedi, General and Jai Shree Thakur, Pritam Saini, for the Appellant; Ravi Sodhi, for the Respondent

Judgement

M.S. Liberhan, J.—This judgment of ours will dispose of Civil Writ Petitions Nos. 4963, 9295, 5595-A, 8132, 4821, 9022, 9180, 9032, 2219, 11682, 5698, 11664, 8200, 11706, 10978, all of 1989, 11544 of 1988 and 11422 of 1988 as a common question of law and fact has been raised.

2. The facts as well as the notification issued are pari materia with the notification issued in this writ petition from where the facts will be taken for deciding the question raised.

3. The petitioner impugned the imposition of show tax on the establishment using video for exhibition of cinema films.

4. The petitioner is a licence-holder for exhibition of films on video under the Punjab Cinema Regulations Act/Rules, 1952. The Punjab State levied an entertainment duty under the Punjab Entertainment Duty Amendment Act, 1986. The respondents in exercise of powers u/s 242(1)(a) of the Punjab Municipal Act, 1911 (hereinafter called "the Act"), imposed the show tax on the establishments which were using video for exhibition of cinema films on commercial basis.

5. The notification has been challenged on the ground that the petitioner has established the video parlour on the implied assurance by the State that, on

deposit of the entertainment tax, no further tax shall be levied by any other authority of the State. The said assurance is said to have been affirmed, vide letter dated February 10, 1986. It is averred that no bye-laws or provisions have been framed with regard to the assessment of the impugned tax, nor have the persons who are liable to pay this tax in terms of Sections 61 and 62 of the Act been specified. It is stated that the tax has been levied in violation of Sections 61 and 62 of the Act. The notification does not provide for the imposition of tax. It only provides the rates of tax ; it does not provide the machinery for the assessment as well as the adjudication of disputes with respect to the amount of tax which may arise between the assessee and the Municipal Committee. Thus, quashing of annexure P-3, i.e., the imposition of show tax, was sought. Though quashing of some municipal entertainment tax was also sought, no notification imposing the said tax has been produced in court.

6. The averments in the writ petition have been refuted by the respondents. It is averred that there is no estoppel, as no undertaking or understanding was given that no other tax shall be imposed. The Municipal Committee never gave any such understanding or acted in such a way which estopped it from imposing any tax under the Punjab Municipal Act, 1911. The petitioner cannot invoke the principle of estoppel in the case of imposition of tax. The respondents cannot be estopped from exercising their delegated legislative powers. It was claimed that the Municipal Committee was within its rights to impose the tax in terms of Sections 61 and 62 of the Act and it has been so imposed. Since the petitioner is running the video parlour, it is liable to pay the show tax.

7. We have gone through the writ petition as well as the notification along with the Division Bench judgment cited by learned counsel for the petitioner. Nothing has been pointed out from which it can be inferred that the respondent-State or the Municipal Committee is estopped from imposing the tax. Vide notification dated April 1, 1986, the State of Punjab levied the entertainment duty by adding the amended provisions of the Punjab Entertainment Duty Act, 1955. Under the said notification, the State of Punjab imposed the entertainment duty on the proprietors of video parlors. It has been specifically stated that no undertaking or any implied understanding was given by the Municipal Committee or the State Government to the petitioner not to impose any other tax. The argument has been noticed, though the petitioner failed to point out even the mini- mum facts to invoke the principle of estoppel like that, what an understanding or undertaking was made on the basis of the what assurance the petitioner bona fidely acted and changed its position and cannot be reverted back to its original position (sic). Apart from this, in matters of imposition of tax, in exercise of delegated legislative powers, the principle of estoppel cannot be invoked.

8. At this stage, in order to deal with the other objections raised, it would be expedient to reproduce the notification which is in the following terms :

"Government of Punjab Department of Local Government (Unit IV) Notification

The 30th December, 1987.

No. 3/6/87-LGUIV/15381 : In exercise of the powers conferred by Clause (a) of Sub-section (1) of Section 242 of the Punjab Municipal Act, 1911 (Punjab Act III of 1911), the President of India is pleased to impose show tax on the establishments who are using video for exhibition of cinema films on commercial basis within the municipal limits of notified area committees in the State as under :--

(i) In places where no permanent cinema exists.

Rs. 500 per calendar month or part thereof.

(ii) In places where permanent cinema exists and population is below one lakh.

Rs. 1,500 per calendar month or part thereof.

(iii) In places where permanent cinema exists and the population is one lakh and above.

Rs. 2,000 per calendar month or part thereof.

Charging of the tax does not mean waiving of the licence which has to be obtained from District Magistrates under the Punjab Cinema (Regulation) Act, 1952.

This notification shall come into force from the date of publication in the Official Gazette."

9. We have read the notification with the help of counsel. From a reading of the notification, nothing is discernible with respect to the persons who are liable to pay the show tax, though the impost of show tax is on the establishment. "Establishment" as ordinarily understood is an institution like school, cinema hall, etc., and tax has been imposed on the establishments, There is nothing on the record to show which establishments shall be liable to pay the tax. No persons have been affixed with the liability for the tax. It has become axiomatic in view of the string of authorities that, while interpreting the taxing statute, one has to look merely at what has been said by the statute. A person cannot be taxed on the basis of an intendment. There cannot be any presumption in matters relating to imposition of tax. Nothing can be implied or be read for imposition of tax. The words of the taxing statute have to be read in the sense in which they were used or in the context of the name known in the trade ordinarily dealing with such words. This is particularly so when there is no definition provided by the Act for a particular word used by it. The authorities are bound to consider the nomenclature of the word used in a particular trade. It is the popular meaning accepted by the people in the trade or dealing with it which has to be given effect to in the statute.

10. Learned counsel for the respondents failed to point out either from the notification or the Act or the Rules or bye-laws the persons on whom the liability

has been fixed with respect to the show tax. The only thing which can be deduced from the notification is with respect to the rate of tax and the property to be taxed.

11. We do not find any force in the contention of learned counsel for the petitioner that there are no provisions for the assessment of the tax or the absence of machinery for assessment or the adjudication of disputes with respect to the amount of tax which may arise between the assessee and the Municipal Committee relating to the show tax. A reference can be made to the Municipal Account Code, 1930, framed u/s 240 of the Punjab Municipal Act, 1911. Chapter VII provides the procedure and the appointment of the persons with respect to the taxes referred to above, The provision runs as under :

"VII. 1(i)(a) In every corporation, in which any tax other than octroi is imposed, the Government may appoint a tax superintendent and one or more assistant tax superintendents. The corporation may appoint such number of tax inspectors, tax clerks or tax collectors as may be necessary for the assessment of such taxes.

(b) In every committee in which any tax other than octroi is imposed, the Government may appoint a tax superintendent and one or more assistant tax superintendents, and such number of tax inspectors, as it may deem necessary for the assessment and collection of such taxes. The committee may appoint such number of tax clerks or tax collectors as may be necessary for the collection of such taxes :

Provided that the Chief Sanitary Inspector or Sanitary Inspector or any corporation or committee shall not be required to perform the duties of tax superintendents, tax inspectors, tax clerks, or tax collectors

A plain reading of the above provision makes it clear that it is the tax superintendent appointed by the Municipal Committee who shall be the tax collector and will have jurisdiction to assess and determine the dispute, if any, raised with respect to the assessment. Thus, the contention raised that there is no system provided for the assessment cannot be sustained. The notification does define the description of property liable, to be taxed, the rates of tax imposed and the system for its assessment.

12. It has been observed by a Division Bench judgment of this court in Bhagwan Dass v. State of Punjab [1989] 6 PLR 435, as under :

"The revised tax shall come into force with effect from August 15, 1976. Later, another notification dated July 9, 1976 under Sub-section (1) of Section 71 of the Act was issued by the Governor of the Punjab by which that tax was reduced from 10 paise to 5 paise per sold ticket. It is admitted by counsel for the respondents that no bye-laws have been framed regarding the entertainment tax. The notification provides regarding imposition of tax at the rate of 10 paise per sold ticket which was later reduced to 5 paise. It prescribes only the rate of assessment and not the system

We are in full agreement with the observations made by the Division Bench and nothing can be gainfully added to it.

So far as compliance with the provisions of Sections 61 and 62 is concerned, the question does not arise. The tax has not been imposed by the Municipal Committee in exercise of its powers under Sections 61 and 62. Herein, the show tax has been imposed by the State in exercise of its taxing power u/s 242 which runs as under :

"242. Power of State Government to impose taxation and regulate expenditure of proceeds thereof.--(1) The State Government may-

(a) impose in any notified area any tax which could be imposed there by the committee under the provisions of Section 61 if the notified area is where a municipality :

Provided that any tax imposed on buildings and lands shall not be subject to the maximum limits prescribed by Sub-clause (a) of Clause (1) of Section 61 :

Provided also that a tax payable by the owner may be made payable by the occupier."

13. There is no procedure prescribed to be followed before imposing the tax envisaged by Section 242. The tax has been imposed, vide impugned notification by the State in exercise of its sovereign powers. On a close scrutiny of the facts, it is obvious that the case is covered by the law laid down in Bhagwan Dass'' case (1989] 6 PLR 435.

14. In view of this, the writ petition is allowed and the impugned notification, annexure P-3, is quashed. There will, however, be no order as to costs.

15. Similar is the situation with respect to the show tax and entertainment tax imposed by the corporations as the statutory provisions of the Corporations Act and the notifications issued are almost, similar and pari inateria in all respects with those of the Municipal Act, 1911, and the notifications issued thereunder.

16. Keeping in view the peculiar facts and circumstances of the case in hand and particularly the fact that local bodies do not run on charity as also the fact that the owners of the parlours have been collecting the tax from the public going for the entertainment by sale of tickets and the same amount has to be used for the betterment of the public in general and the petitioner cannot be permitted to enrich itself from the amount so collected from the public under the garb of the statute which, for the reasons recorded above, is found to be invalid, the Municipal Committee shall not be liable to refund the tax already recovered.