

(1959) 01 SC CK 0009

In the Supreme Court Of India

Case No : Civil Appeals No's. 280 to 286 and 288 of 1956

Y.V. Srinivasamurthy and Others

APPELLANT

Vs

The State of Mysore and Another

RESPONDENT

Date of Decision : 16-01-1959

Acts Referred:

Constitution of India, 1950 — Article 14, 276(2)

Government of India Act, 1935 — Section 142A

Mysore Cinematograph Shows Tax Act, 1951 — Section 2, 3

Citation : AIR 1959 SC 894

Hon'ble Judges : S.R. Das, C.J; S.K. Das, J; P.B. Gajendragadkar, J; M. Hidayatullah, J; K.N. Wanchoo, J

Bench : Full Bench

Advocate : R.M. Seshadri and S. Venkatakrishnan, for the Appellant; H.N. Sanyal, Additional Solicitor-General of India, R. Gopalakrishnan, R.H. Dhebar and T.M. Sen, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Das, J.—These eight appeals arise out of eight writ Petitions filed by the Appellants in the High Court of Mysore challenging the validity of the Mysore Cinematograph Shows Tax Act of 1951 (Mysore Act XVI of 1951) and praying for appropriate writs or orders restraining the Respondents or their officers from collecting the taxes which had been levied under the provisions of the said Act from the Appellants, as the said provisions contravened the provisions of Article 276(2) and Article 14 of the Constitution of India. The Appellant in Appeal No. 281 of 1956 is the lessee of a cinema House where he exhibits cinema films. All the Appellants in the other appeals are the owners of their respective cinema Houses where they exhibit cinema films. As the Division Bench of the Mysore High Court hearing the Petitions was unable to come to an agreed decision, the matter was referred to a Full Bench. By a unanimous judgment delivered on 31-1-1956 the Full Bench dismissed the writ Petitions. Aggrieved by the said judgment the Appellants applied for and, on 10-2-1956 obtained certificates of

fitness for appeal to this Court. Hence the present appeals which have been consolidated and heard together.

2. The tax has been sought to be levied u/s 3 of the Mysore Cinematograph Shows Tax Act, 1951 which authorises the levy of tax on cinematograph shows calculated at rates therein mentioned. "Cinematograph Show" has been defined in Section 2 as meaning any cinematograph exhibition held in any place to which persons are admitted on payment. The rates of taxes have been prescribed in that section in a rising scale according to the seating accommodation and the cities where the cinematograph show is held. This Act, according to the Respondents, is a law with respect to matters enumerated in entry 62 of List II of the Seventh Schedule to the Constitution which runs as follows: "Taxes on luxuries including taxes on entertainments, amusements, betting and gambling" which corresponds to entry 50 in List II to the Seventh Schedule to the Government of India Act, 1935. Learned Counsel for the Appellants, on the other hand, contends that this Act is clearly a law made with respect to matters enumerated in entry 60 of List II of the Seventh Schedule to the Constitution which reads thus: "Taxes on professions, trades, callings and employments". The argument is that that being the true position, the amount of tax cannot exceed the amount permitted by Article 276(2) of the Constitution which corresponds to Section 142-A of the Government of India Act, 1935. This point is covered by our judgment just, delivered in *The Western India Theatres Ltd. Vs. The Cantonment Board, Poona, Cantonment*, and must be held against the Appellants.

3. It is only necessary here to refer to an additional argument that was advanced by learned Counsel for the Appellants before us in support of his contention. He drew our attention to entry 33 of List II of the Seventh Schedule to the Constitution which runs as follows: "Theatres and dramatic performances; cinemas subject to the provisions of entry 60 of List I; sports, entertainments and amusements." He contends that that entry covers laws made with respect to each of the items as a separate subject, but points out that entry 62, which has been quoted above, permits imposition of tax only on luxuries including taxes on entertainments, amusements, betting and gambling. Learned Counsel concludes that that law made with respect to entry 62 cannot permit imposition of taxes on cinemas, for the word "cinemas" mentioned in entry 33 has been omitted from entry 62. We do not think there is any substance in this argument. Learned Counsel agrees that the words 'entertainments' and "amusements" are wide enough to include theatres, dramatic performances, cinemas, sports and the like. If his argument is correct, then, on a parity of reasoning, the State Legislature will have no competence to enact a law imposing a tax on theatres or dramatic performances or sports, for none of those words are mentioned in entry 62. This is sufficient to repel this argument. The truth of the matter is that 'cinema' had to be specifically mentioned in entry 33 of List II in order to avoid any possible conflict between it and entry 60 in List I.

4. The only other argument advanced by learned Counsel for the Appellants is

that even if the tax comes under entry 62, its quantum is so large that it destroys the Appellants' business and he has referred us to the decision of the Judicial Committee in *Attorney-General of Alberta v. Attorney-General of Canada* AIR 1939 PC 53. This is a point which necessarily involves an investigation into facts and depends upon the evidence that may be adduced. No such evidence has been led. Further, as stated in the same judgment, the court has no concern with the wisdom of the legislature and that it would be a dangerous precedent to allow the views of the members of the court as to the serious consequences of excessive taxation to lead to a conclusion that the law is 'ultra vires'. Moreover, this is a point which was never urged before the High Court and no evidence was led in support of it and in the circumstances the Appellants cannot be permitted to raise this new point at this final stage.

5. For reasons stated above these appeals must be dismissed with one set of costs.