Veena Theatre, Patna vs The State Of Bihar on 23 April, 1970

Equivalent citations: AIR1970SC1522, (1970)3SCC79, AIR 1970 SUPREME COURT 1522

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Bench: A.N. Grover, J.C. Shah, K.S. Hegde

JUDGMENT

K.S. Hegde, J.

1. This appeal by certificate under Article 133(1)(a) of the Constitution arises from the decision of the High Court of Judicature at Patna dismissing the appellant's writ petition under Articles 226 and 227 of the Constitution. In that writ petition, the appellant asked the High Court to,quash the entertainment tax of Rs. 67,500 levied on it for the period from 1-4-1959 to 30-9-1959. The High Court rejected that prayer.

2. The appellant is the owner of 'Veena Cinema' in the town of Patna. As required by the provisions of the Bihar Entertainment Tax Act, 1948 (Bihar Act XXXV of 1948) (to be hereinafter referred to as the Act) and the rules framed thereunder, for the period 1-4-1959 to 30-9-1959, the appellant submitted a return showing a tax liability of Rs. 36,860. It deposited that amount. But the Additional Superintendent, Commercial Taxes Patna rejected its return and assessed it on the basis of best judgment, and levied a tax of Rs. 67,500 on it for the period in question. The appellant unsuccessfully appealed to the Appellate Assistant Commissioner, Commercial Taxes and thereafter took up the matter in revision before the Deputy Commissioner of Commercial Taxes. That officer made some minor modification in the assessment order; but he substantially upheld the order of the Additional Superintendent. Aggrieved by that order, the appellant took up the matter to the High Court as mentioned above.

3. Before the High Court as well as this Court the appellant raised four questions of law namely (1) Rule 28(4) of the rules is beyond the rule-making power conferred on the State Government under Section 21 of the Act; (2) No power is given either under the provisions of the Act or under the rules to assess on the basis of best judgment; (3) Rule 28(4) is repugnant to Section 9(2) of the Act and (4) "The assessing authority had arbitrarily fixed the assessee's receipts.

4. The return submitted by the appellant was rejected by the authorities on the grounds that the books of account produced by the appellant were entirely unreliable; that the appellant had maintained duplicate sets of tickets and had suppressed the sale of the tickets. These findings were based on the result of a surprise inspection. All the authorities under the Act have concurrently

come to the conclusion that the account-books produced by the appellant were entirely unreliable; that it had maintained duplicate sets of tickets and that it suppressed the sale of tickets. These findings were not challenged before the High Court and therefore we did not allow the learned Counsel for the appellant to challenge those findings. In view of those findings, it cannot be denied that the taxing authorities were justified in rejecting the return submitted by the appellant.

5. Section 9 of the Act deals with submission of returns and payment and recovery of entertainments. That section does not prescribe the procedure to be adopted in determining the receipts of the assessee by the sale of tickets. Sub-section (1) of that section merely says that every proprietor of entertainment shall furnish such returns by such dates and to such authority as may be prescribed. No provision in the Act deals with the mode of determination of tax payable by an assessee. That aspect of the matter is left to be governed by the rules to be made. Section 21 of the Act empowers the State Government to make rules. Sub-section (1) of that section provides that the State Government may make rules, consistent with the Act for securing the payment of entertainments tax and generally for the purpose of carrying info effect the provisions of the Act. The power given under this provision is wide enough to make rules for the determination of the tax liability of an assessee. The mode and the manner in which that liability is to be determined can be provided under the rules. The main purpose of the Act is to levy and collect entertainment tax. Therefore it is idle to say that in exercise of the powers conferred on the State Government under Section 21(1) of the Act that Government cannot make rules for the determination of the tax liability of an assessee. Hence we reject the contention that Rule 28(4) which empowers the taxing authorities to determine the tax liability is ultra vires Section 21 of the Act.

6. Rule 28 reads:

> (1) If the Superintendent or Assistant Superintendent is satisfied without requiring the presence of the proprietor or production by him of any evidence that the return furnished in respect of any period is correct and complete, he shall assess the amount of tax due from the proprietor on the basis of such return.
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> (2) If the Superintendent or Assistant Superintendent is not satisfied without requiring the presence of the proprietor or production of evidence that the return furnished in respect of any period is correct and complete, he shall serve a notice in form XI on such proprietor requiring him on a date and at a place to be specified therein either to attend in person or to produce or cause to be produced any evidence on which the proprietor relies to prove the correctness of such return or to submit such other accounts, registers or documents of the proprietor as may be considered necessary by the Superintendent or Asstt. Superintendent for the purpose of determining the amount of tax due against the proprietor.
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> (3) On the date specified in the notice or as soon afterwards as may be, the Superintendent or Assistant Superintendent after hearing such evidence as the proprietor may produce and such other evidence as the Superintendent or Assistant Superintendent may require on specified points shall assess the amount of tax due

from the proprietor.

(4) If the proprietor fails to make a return or having made the return, fails to comply with all the terms of the notice issued under Sub-rule (2) or to produce any evidence required under Sub-rule (3), the Superintendent or Assistant Superintendent shall, after giving the proprietor a reasonable opportunity of being heard, assess to the best of his judgment, the amount of tax, if any, due from the proprietor.

7. This rule is similar to Section 23 of the Indian Income-tax Act, 1922. Sub-rule (4) of Rule 28 is analogous to Sub-section (4) of Section 23. In view of Sub-rule (4) of Rule 28, the Superintendent or Assistant Superintendent, as the case may be, is competent to make an-assessment on the basis of best judgment. The contention that the power conferred under Sub-rule (4) of Rule 28 is available only if the assessee fails to make a return or having made it, fails to comply with the terms of the notice issued under Sub-rule (2) or to produce any evidence under Sub-rule (3), overlooks the fact that the assessee must satisfy that the return made by him is a correct one. If the return made by the assessee is rejected on a relevant ground, such a return cannot be considered as a good return under Sub-rule (1) of Rule 28. In that event, the assessee is deemed to have made no return as required by Rule 28(1) and consequently he is liable to be assessed on the basis of best judgment.

8. There is no substance in the contention that Rule 28 is repugnant to Section 9(2) of the Act. That rule covers a field uncovered by Section 9(2). The provisions relating to the imposition of penalty found in Section 9(2) are not inconsistent with or repugnant to the provisions contained in Rule 28. Rule 28 deals with assessment whereas Sub-section (2) of Section 9 deals with imposition of penalty. Hence the contention that Rule 28 is inconsistent with Section 9(2) has to be rejected.

9. We are unable to accept the contention that the assessment in this case was arbitrarily made. The Assistant Superintendent of Commercial Taxes had computed the tax liability of the assessee on relevant grounds. He arrived at the conclusion that the tax liability of the assessee for the period in question is Rs. 67,500 after taking into consideration materials which were relevant in that regard. Dealing with that aspect of the case this is what that officer says in his order:

> The Veena cinema has a capacity so as to yield a tax of nearly 500 per show, if the house goes full. If, therefore, the Cinema had run to the capacity of all days and in each show of the assessment period, the tax would have amounted to Rs. 2,70,000. But it is a known fact that the shows run full to the capacity only on the first days of the start of exhibition of a good and popular picture and that too only in the evening shows. The matinee and the night shows full (sic). As the picture gets older, the sale decreases. Towards the end, the number of persons to witness the picture thin down considerably and the amount of tax falls even below Rs. 50. Taking these points into consideration I feel that the business done by this Cinema in the assessment period was such as to give tax at the average rate of Rs. 125 per show. At this rate the total amount of tax payable in the assessment period comes to Rs. 67,500. This cinema is therefore, assessed to pay a tax of Rs. 67,500 for the period from 1-4-59 to 30-9-1959.

10. The facts mentioned above are cogent and relevant in the matter of computing the probable receipts by sale of cinema tickets.

11. For the reasons mentioned, above this appeal fails and the same is dismissed with costs.