The Western India Theatres Ltd vs The Cantonment Board, ... on 16 January, 1959

Equivalent citations: 1959 AIR 582, 1959 SCR SUPL. (2) 63, AIR 1959 SUPREME COURT 582, 1959 SCJ 386 1961 BOM LR 950, 1961 BOM LR 950

Bench: S.K. Das, P.B. Gajendragadkar, K.N. Wanchoo, M. Hidayatullah

PETITIONER:
THE WESTERN INDIA THEATRES LTD.

Vs.

RESPONDENT:
THE CANTONMENT BOARD, POONA,CANTONMENT

DATE OF JUDGMENT:
16/01/1959

BENCH:
DAS, SUDHI RANJAN (CJ)
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DAS, SUDHI RANJAN (CJ)
DAS, S.K.
GAJENDRAGADKAR, P.B.
WANCHOO, K.N.
HIDAYATULLAH, M.

CITATION:
1959 AIR 582 1959 SCR Supl. (2) 63
CITATOR INFO :
R 1959 SC 586 (4)
F 1959 SC 894 (2)
R 1962 SC1006 (74)
E 1989 SC1949 (7)
R 1990 SC 85 (23)
R 1992 SC1848 (7)

ACT:
Entertainment Tax-Imposition on cinema show-Validity-Cantonments Act, 1924 (Act 11 of 1924), s. 60-Bombay Municipal Boroughs Act, 1925 (Bom. XVIII of 1925), s. 73-Government of India Act, 1935, s. 100, Sch. VII, Entry 50.

HEADNOTE:
The appellant, a public limited company, was the lessee of wo cinema houses, " West, End " and " Capitol " situated

within the Poona cantonment area. , By a notification dated June 17, 1948, the Bombay Government with the sanction of the Governor-General-in-Council imposed certain taxes in the cantonment of Poona including an entertainment tax of Rs. 10 per show on the appellant's cinema houses and Rs. 5 per show on others. The appellant, who paid the tax under protest, brought the suit, out of which the present appeal arose, for a declaration that the

64

imposition of the said tax by the respondent was illegal, for a permanent injunction restraining it from levying the tax and for the refund of Rs. 45,802, paid as tax by the appellant. The trial Court decreed the suit but the High Court, on appeal by the respondent, reversed the decision of the trial Court and dismissed the suit.' Under s. 60(1) of the Cantonments Act, 1924 (11 Of 1924), read with S. 73 (xiv) Of the Bombay Municipal Boroughs Act, 1925 (Bom. XVIII of 1925), the respondent had the power to impose any other tax which the Bombay Provincial Legislature could impose on the province. The question, therefore, was whether the Bombay Legislature had the power to impose the tax in question. It was contended on behalf of the appellant that although the Provincial Legislature had undoubtedly the power under s. 100 of the Government of India Act, 1935, read with Entry 50 in Sch. VII thereto, to make law with respect to " taxes on luxuries, including taxes on entertainments, amusements, betting and gambling ", the said entry contemplated a law imposing taxes on persons who enjoyed the luxuries, entertainments or amusements and not on persons who provided them. Such a tax, if levied on the latter would be one on profession, trade or calling as contemplated by Entry 46 of the said Schedule and could not exceed Rs. 100 per annum under s. 142A of the Government of India Act, 1935, and Rs. 250 per annum under Art. 276(2) of the Constitution.

Held, that the contention must be negatived.

It is well-settled that in construing an entry conferring legislative powers, the widest possible construction according to their ordinary meaning must be given to the words used. There could be no reason, therefore, in construing Entry 50, to differentiate between the giver and the receiver of the luxuries, entertainments or amusements and both must be held to be amenable to the tax.

Navinchandra Mafatlal v. The Commissioner of Income-tax, Bombay City, [1955] 11 S.C.R. 829, referred to.

Although an entertainment tax was regarded as a tax on expenditure, there was no warrant for holding that Entry 50 contemplated only a tax on moneys spent on luxuries, entertainments or amusements. What it had in view were these matters, and not either the giver or the receiver of them, as the real objects of legislation.

The impugned tax was distinguishable from a tax on a profession or calling. It was a tax imposed on an actual show,

and not on a profession or calling whether there was an exercise of it or not.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 145 of 1955. Appeal from the judgment and decree dated the February 10, 1953, of the Bombay High Court in Appeal No. 742 of 1951 from Original Decree, arising out of the judgment and decree dated July 31, 1951,, of the Court of the Senior Civil Judge, Poona, in Special' Suit No. 89 of 1950.

H. D. Banaji, R. A. Gagrat and G. Gopalakrishnan, for the appellant.

H. N. Sanyal, Additional Solicitor-General of India, H. J. Umrigar and R. H. Dhebar, for the respondent. 1959. January 16. The Judgment of the Court was delivered by DAS, C. J.-This is an appeal from the judgment and decree of the High Court of Bombay dated February 10, 1953, setting aside the judgment and decree of the Court of Civil Judge, Senior Division, Poona dated July 31, 1951, in Special Suit No. 89 of 1950 and dismissing the appellant's suit against the respondent with costs throughout. This appeal has been filed under a certificate of fitness granted by the High Court of Bombay.

The facts leading up to this appeal may shortly be stated. The appellant is a public limited company registered under the Indian Companies Act, 1913. It is a lessee of two cinema Houses known respectively as " West End " and "

Capitol " situated within the limits of Poona cantonment area. It exhibits in the said two Houses cinematograph films, both foreign and Indian.

On March 20, 1947, a notice was issued by the respondent whereby, in exercise of the powers conferred on it by s. 60 of the Cantonments Act, 1924 (11 of 1924), the respondent proposed to make, with the previous sanction of the Central Government, certain amendments in the notification of the Government of Bombay in the General Department No. 4160 dated June 17, 1918, and intimated that the draft amendments would be considered by the respondent on or after April 21, 1947, and invited objection in writing within 30 days from the publication of that notice. One of the items of amendments was as follows:-

"(ii) 'V-Tax on Entertainments'

1. Cinemas, Talkies or Rs. 5-0-0 per dramas Rs. 10-0-0 show

2. Circus Rs. 20-0-0 per show

3. Horse Races Rs. 100-0-0 per day of race meeting.

4. Amusement park Rs. 20-0-0 per day provided as follows:-

1. The said tax shall be levied at the rate of Rs. 10-0-0 per show in the case of the West End and Capitol Talkies and at the rate of Rs. 5-0-0 per show in other cases ".

It appears that the Cinematograph Exhibitors Association of India submitted certain objections to the proposals. The Cantonment Executive Officer, Poona, by his letter dated July 8, 1947, informed the Secretary of the Cinematograph Exhibitors Association of India that the latter's letter had been submitted to the Government of India in original along with the respondent's proposals and that the imposition of the entertainments tax on cinemas had been approved by the Government of India, Defence Department notification No. 1463 dated May 7, 1947. On June 17,1948, a notification was issued by the Government of Bombay to the effect that in supersession of the notifications of Government noted on the margin and of all other notifications on the same subject, the Governor in Council, with the previous sanction of the Governor General-in-Council was pleased to impose certain taxes in the Cantonment of Poona with effect from July 15, 1948. One of the taxes thus imposed was as follows:-

" V Tax on entertainments.

1. Cinemas, Talkies or dramas Rs. 10.0-0 :in the case of the West End per show and Capitol In other cases Rs. 5-0-0 per show

2. Circus Rs. 2-0-0 per show

3. Horse Races Rs. 100-0-0 per day of race meetings.

4. Amusement park Rs. 20-0-0 per day."

The appellant paid the tax under protest and on or about April 19, 1950, filed a suit (being suit No. 89 of 1950) against the respondent in the Court of the Civil Judge, Senior Division, Poona for a declaration that the levy, collection or recovery of the said tax by the respondent was illegal and invalid, for a permanent injunction restraining the respondent from levying, collecting or recovering the said tax, for refund of the sum of Rs. 45,802-0-0 being the total amount of tax collected from the appellant, for costs and interest on judgment. By its judgment dated July 31, 1951, the trial court decreed the suit in full. The respondent preferred an appeal before the High Court against the said judgment and decree of the trial court and the High Court by its judgment and decree dated February 10, 1953, allowed the appeal and dismissed the appellant's suit with costs throughout. The High Court, however, granted to the appellant a certificate of fitness for appeal to this Court and hence this final appeal questioning the validity of the said tax.

At all times material to this appeal the respondent was governed by the Cantonments Act, 1924 (Act 11 of 1924). Section 60 of that Act runs as follows:-

> " 60(1) The Board may, with the previous sanction of the local Government, impose in any Cantonment any tax which, under any enactment for the time being in force, may be imposed in any municipality in the province wherein the Cantonment is situated.
>
> (2) Any tax imposed under this section shall take effect from the date of its notification in the official gazette ".

The enactment under which shortly after the date of passing of the Cantonments Act, 1924, tax could be imposed by the municipal boroughs in the province of Bombay was the Bombay Municipal Boroughs Act, 1925 (Bom. XVIII of 1925). Therefore the powers of the respondent to. levy and collect taxes under the provisions of the Cantonments Act were co- extensive with the powers of the Borough Municipalities under the Bombay Municipal Boroughs Act, 1925. Section 73 of the last mentioned Act specified the taxes which might be imposed by a municipality. The relevant portions thereof, prior to its present adaptation, were as follows:-

> " Subject to any general or special orders which the Provincial Government may make in this behalf and to the provisions of sections 75 and 76, a municipality may impose for the purposes of this Act any of the following taxes, namely:-
>
> (xiv) any other tax (not being a toll on motor vehicles and trailers., save as provided by section 14 of the Bombay Motor Vehicles Tax Act, 1935) which under the Government of India Act, 1935, the provincial Legislature has power to impose in the province." The question is whether the provincial legislature of Bombay had power to impose the tax which is under consideration in this appeal.

Under s. 100 of the Government of India Act, 1935 read with entry 50 in Sch. VII thereto the provincial legislature had power to make law with respect to " taxes on luxuries, including taxes on entertainments, amusements, betting and gambling ". Learned counsel for the appellant contends that the impugned tax is not covered by this entry at all. This entry, according to him, contemplates a law imposing taxes on persons who receive or enjoy the luxuries or the enter- tainments or the amusements and, therefore, no law made with respect to matters covered by this entry can impose a tax on persons who provide the luxuries, entertainments or amusements, for the last mentioned persons themselves receive or enjoy no luxury or entertainment or amusement, but simply carry on their profession, trade or calling. Learned counsel urges that the impugned law is really one with respect to matters specified in entry 46, namely, taxes on professions, trades, callings and employments and, there- fore, cannot exceed Rs. 100 per annum under s. 142A of the Government of India Act, 1935 and Rs. 250 per annum under Art. 276(2) of the Constitution. We are unable to accept this argument as sound.

As pointed out by this' Court in Navinchandra Mafatlal v. The Commissioner of Income Tax, Bombay City (1), following certain earlier decisions referred to therein, the entries in the legislative list should not be read in a narrow or restricted sense and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be

comprehended in it. It has been accepted as well settled that in construing such an entry conferring legislative powers the widest possible con- struction according to their ordinary meaning must be put upon the words used therein. In view of this well established rule of interpretation, there can be no reason to construe the words " taxes on luxuries or entertainments or amusements " in entry 50 as having a restricted meaning so -as to confine the operation of the law to be made thereunder only to taxes on persons receiving the luxuries, entertainments, or amusements. The entry contemplates luxuries, entertainments, and amusements as objects on which the tax is to be imposed. If the words are to be so regard- ed, as we think they must, there can be no reason to differentiate between the giver and the receiver of the luxuries, entertainments, or amusements and both may, with equal propriety, be made amenable to the tax. It is true that economists regard an entertainment tax as a tax on expenditure and, indeed, when the tax is imposed on the receiver of the entertainment, it does become a tax on expenditure, but there is no warrant for holding that entry 50 contemplates only a tax on moneys spent on luxuries, entertainments or amusements. The entry, as we have said, contemplates a law with respect to these matters regarded as objects and a law which imposes tax on the act of entertaining is within the entry whether it falls on the giver or the receiver of that entertainment. Nor is the impugned tax a tax imposed for the privilege of carrying on any trade or calling. It is a tax imposed on every show, that is to say, on every instance of the exercise of the particular trade, calling or employment. If there is no show, there is no tax. A (1) [1955] 1 S.C.R. 829.

lawyer has to pay a tax or fee to take out a license irrespective of whether or not he actually practises. That tax is a tax for the privilege of having the right to exercise the profession if and when the person taking out the license chooses to do so. The impugned tax is a tax on the act of entertainment resulting in a show. In our opinion, therefore, s. 73 is a law with respect to matters enumerated in entry 50 and not entry 46 and the Bombay legislature had ample power to enact this law. The only other point urged before us is that the notification is violative of the equal protection clause of our Constitution in that it has picked out the appellant's cinema houses for discriminatory treatment by imposing on it a tax at the rate of Rs. 10 per show, while a tax of only Rs. 5 per show is imposed on other cinema houses. The meaning, scope, and effect of the provisions of Art. 14 of our Constitution have been fully dealt with, analysed and laid down by this Court in Budhan Choudhury v. The State of Bihar (1) and Shri Rama Krishna Dalmia v. Shri Justice S. R. Tendolkar (2). It appears, however, from the record that no issue was raised and no evidence was adduced by the appellant before the trial court showing that there were other cinema Houses similarly situate as that of the appellant's cinema Houses. It may not be unreasonable or improper if a higher tax is imposed on the shows given by a cinema house which contains large seating accommodation and is situate in fashionable or busy localities where the number of visitors is more numerous and in more affluent circumstances than the tax that may be im. posed on shows given in a smaller cinema house containing less accommodation and situate in some localities where the visitors are less numerous or financially in less affluent circumstances, for the two cannot, in those circumstances, be said to be similarly situate. There was, however, no material on which the trial court could or we may now come to a decision as to whether there had been any real discrimination in the facts and circumstances of this case. It (1) [1951] S.C.R. 1045.

(2) [1959] S.C.R. 279.

may be that the appellant may in some future proceeding adduce evidence to establish that there are other cinema houses similarly situate and that the imposition of a higher tax on the appellant is discriminatory as to which we say nothing; but all we need say is that in this suit the appellant has not discharged the onus that was on him and, on the material on record, it is impossible for us to hold in this case that there has been any discrimination in fact. For reasons stated above this appeal must be dismissed with costs.

Appeal dismissed