Venkateshwara Theatre vs State Of Andhra Pradesh And Ors on 10 May, 1993

Equivalent citations: 1993 AIR 1947, 1993 SCR (3) 616, AIR 1993 SUPREME COURT 1947, 1993 (3) SCC 677, 1993 AIR SCW 2098, (1993) 2 APLJ 37.3, (1993) 3 SCR 616 (SC), (1993) 3 JT 270 (SC), (1995) 96 STC 130

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Bench: S.C. Agrawal, M.M. Punchhi

PETITIONER:
VENKATESHWARA THEATRE

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH AND ORS.

DATE OF JUDGMENT10/05/1993

BENCH:
AGRAWAL, S.C. (J)
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AGRAWAL, S.C. (J)
PUNCHHI, M.M.

CITATION:
1993 AIR 1947 1993 SCR (3) 616
1993 SCC (3) 677 JT 1993 (3) 270
1993 SCALE (2)825

ACT:
Constitution of India, 1950--Seventh Schedule--List II, Entry. 62--Taxes on entertainments--Andhra Pradesh Entertainment Tax Act, 1039--Constitutional Validity of--Question as to legislative competence of State Legislature--Factors to be consiseres.
Andhra Pradesh Entertainment Tax Act 1939--Sections 4 and 5--Pre and post amendment to A.P.Act 24 of 1984--Levy of tax--Modes of--Alteration in the mode whether has effect of altering the nature of Tax--Legislative competency--Scope of.
Constitution of India, 1950--Article 14-Equality before law"--Construction--Law to operate differently on different groups--Conditions for classification-Classifying items for tax--Legislature's discretion--Ambit of--Discrimination-when becomes.

Andhra Pradesh Entertainment Tax Act.1939--Sections 4 and 5--Whether Ultra vires of Article 14, Constitution of India. Andhra Pradesh Entretainment Tax Act, 1939--Section 5(6)--Opinion for payment of weekly consolidated amount--Legality.

HEADNOTE:

Prior to January 1, 1984, the Andhra Pradesh Entertainment Tax Act, 1989, in Section 4, provided for levy of entertainment tax at a rate fixed on the has is of percentage of payment made by a person for admission to any entertainment. In section 4-C, in respect of entertainments held within the jurisdiction (if any local authority where population did n(it exceed 25, 000. tax was levied at a certain percentage of the gross collection capacity per show and the percentage for such levy were fixed according to the population of the local authority within the jurisdiction of which the entertainment held.

The Amending Act 24 of 1984, replaced the earlier mode of levy of tax prescribed in Section 4 and introduced a mode of levy of tax on the has is of a prescribed percentage of the gross collection capacity per show. The rates

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were fixed on the basis of a percentage of the gross collection capacity per show varying with the category of the local area in which the theatre was situated as well as on the nature of the theatre, viz. air conditioned air cooled or (other than air conditioned and air-cooled)or permanent,semi-permanent including touring and temporary the atres. The proprietor was given an option to pay a weekly consolidated amount irrespective of the number of shows actually held by him and the said amount was fixed on the basis of the prescribed number of shows per week. The number of show.-. varied with the nature of the theatre as well as the category of the local area in which it was situate. A fixed amount was also leviable by way of show tax on each show.

Before the High Court, a number of writ petitions were filed challenging the validity of sections 4,4-A and 5 of the Andhra Pradesh Entertainments Tax Act, 1939, as amended by Act 24 of 1984, on the grounds that (i) the levy of entertainment tax on the basis of gross collection capacity without reference to the actual amount collected or the actual number of tickets sold or the number of persons admitted was ultra vires the legislative power conferred on the State Legislature under Entry 62 of List 11 of the Seventh Schedule of the Constitution; (ii) section 4 was hit by Article 14 of the Constitution, as it gave rise to discrimination amongst different theatres situate within the same local area; and that (iii) the levy of entertainment tax under section 4 being exproprietory amounted to an

unreasonable restriction on the right guaranteed to the petitioners by Article 19(1) (g) of the Constitution and was not saved under Article 19(6).

Relying upon the decisions in Western India Theatres v. Cantonment Board.. [1959] Supp. 2 SCR 63; Y.V. Srinivasamurthy v. State of Mysor. AIR 1959 SC 894 and State of bombay v. R.M.D. Chamarbaugwala. A. I. R. 1957 S.C. 699 the High Court dismissing the writ petitions held that the State Legislature was competent to levy the tax under Entry 62 of List 11 of the Seventh Schedule; that as the tax levied retained the character of entertainment tax, the Legislature was competent to adopt such basis or such measure, or such method of levy; that wide discretion was allowed to the Legislature in the matter of classification and in the matter of selection of persons to be taxed and that the two-fold classification made by section 4 was neither discriminatory nor arbitrary or it did not mete out hostile discrimination to certain theatres; that the rates of tax that were prescribed under section 4 based on an average expected occupancy rate of less than 50 per cent to 66 per cent, was neither unreasonable nor expropriatory; that section 5 was only optional and no) one was compelled to be governed by it or to opt for the composition scheme and if a person opted to be governed by section 5, he must be deemed

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to have accepted all the conditions and features of the scheme.

During the pendency of these appeals Special leave petition in this court the Act of 1939 was amended by A.P. Act 23 of 1988 and A.I. Act 16 of 1991, whereby the Tables below sections 4, 4-A and 5 were substituted and subsection (6A) was inserted in section 5.

Before this Court the appellants and the petitioners reiterated two contentions raised before the High Court while assailing the constitutional validity of sections 4 and 5 of the Act, namely, (1) that the impugned provisions did not fall within the ambit of the legislavite power conferred on the St-.Ate Legislature under Entry 62 of List 11 of the Seventh Schedule of the Constitution; (ii) that the impugned provisions were violative of Article 14 of the Constitution, as they provided for imposing tax at a uniform rate (in a particular class of Cinema theaters irrespective of their location and occupancy.

Dismissing the appeal and the Special Leave petition, this Court,

HELD: 1.1. While considering the question as to legislative competence of the State Legislature, it is necessary to bear in mind that the impugned provisions provide for imposition of a tax and a tax has two distinct elements viz., subject of the tax and the measure of the tax. The subject of the tax is the person, think or activity on which the tax is imposed, and the measure of the tax is the standard by which

the amount of tax is measured. (632-1))

1.2. The competence of the Legislature to enact a law imposing a tax under a particular head of the legislative list has to be examined in the context of the subject of the tax. It the subject of the tax falls within the ambit of the legislative power conferred by the head of legislative entry, it would be within the competence of the Legislature to impose such as tax. (632-E)

1.3. Prior to the enactment of Act 24 of 1984, there were two modes for levy of the tax, one on the basis of the actual number of persons admitted to each show and the other on the basis of the percentage of the grows collection capacity per show. As a result of the amendments introduced by Act 24 of 1984, the system for levy of tax on the basis of number (of persons actually admitted to each show was dispensed with and the tax was to be levied on the basis of the percentage of the gross collection capacity per show and different percentages were prescribed depending on the type of the theatre and the

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nature of the local area where it was situated. (633-F-H)

1.4. The question whether the alteration in the said mode of levy of tax by Act 24 of 1984 has the effect of altering the nature of the tax in a way that it has ceased to he a tax on entertainments and falls beyond the field of legislative competence conferred (in the State Legislature by Entry 62 of List 11, must he answered in the negative. 'The fact that instead of tax being levied on the basis of the payment for admission made by the persons actually admitted in the theater it is being levied on the basis of the gross collection capacity per show calculated on the basis of the notional aggregate of all the payments fair admission which the proprietor would realise per show if all the seats or accommodation in respect of the place of entertainment are (occupied and calculated at the maximum rate of payments for admission, would not alter the nature of the tax or the subject-matter of the tax which continues to he a tax on entertainment. (634-B-D)

1.5. The mode of levy based on 'per payment for admission' proscribed under Section 4(1) prior to amendment by Act 24 of 1984 necessitated enquiry into the number of shows held at the theatre and the number of persons admitted to a cinema theatre for each show and gave room for abuse both on the part of proprietor as well as other officers incharge of assessment and collection of tax. The mode of levy or measure of the tax prescribed under section 4(1),as substituted by Act24 of 1984, is a more convenient mode of levy of the tax inasmuch as it dispenses with the need to verify or enquire into the number of persons admitted to each show and to verify the correctness or otherwise of the returns submitted by the proprietor containing the number of persons admitted (A) each show and the amount of tax collected. (634-E)

1.6. On an examination of the rates prescribed under both the modes it is found that under the system (of consolidated levy prescribed under Section 4-C, the proprietor could break even if the average rate of occupancy was 40%. As regards the rates prescribed under Sections 4 and 5 as amended by Act 24 of 1984 they are based on an average expected occupancy rate of less than 50% or 66% depending upon the area in which the theatre is situated. This would mean that the entertainment tax that would be collected over and above the average occupancy rate would constitute the profit of the proprietor. In the circumstances, it cannot be said that the adoption of the system of consolidated levy in Section 4(1) as amended by Act 24 of 1984 alters the nature of tax and it has ceased to be a tax on entertainments. (634-F-H)

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1.7. Once it is held that tax #in entertainment could be levied either of the two modes, viz., per payments of admission or gross collection capacity per show, it is for the legislature to decide the particular mode or modes of levy to be adopted and whether a choice should he available to the proprietor of the cinema theatre in this regard. The legislature does not transgress the limit: of its legislative power confer red on it under Entry 62 of List 11 if it decides that consolidated levy on the basis of gross collection capacity per show shall be the only mode for levy of tax on entertainments (635-C)

1.8. The impugned provisions contained in Sections 4 and 5 as amended by Act 24 of 1984 are not ultra vires the legislative power conferred on tile State Legislature under Entry 62 of List 11. (635-D)

Western India Theatres v. Cantonment Board, [1959] Supp. 2 SCR 63 and Y. V Srinivasamurthy v. State of Mysore AIR 1959 SC 894, explained.

2.01. The right conferred by Article 14 postulates that all persons similarly circumstanced shall he treated alike both in privileges conferred and liabilities imposed, Since the State, in exercise of its governmental power, has, of necessity, to make laws operating differently on different groups of persons within its territory to attain particular ends in giving effect to its policies, it is recognised that the State must possess the power of distinguishing and classifying persons or things to be subjected to such laws. It is, however, required that the classification must satisfy two conditions, namely, (i)it is founded on an intelligible different is which distinguishes those that are grouped together from others; and (ii) the differential must have a rational relation to the object sought to be achieved by the Act.It is not the requirement that the classification should be scientifically perfect or logically complete. Classification would be justified if it is not palpable arbitrary. (636-A-C)

Re-Special Courts Bill, (1979) 2 SCR 476 at pp. 534-536 and

Khandige Sham Bhat v. Agricultural Income-Tax Officer, [1963] 3 SCR 809 at p. 817. followed.

2.02. In the field of taxation the legislature exercises an extremely wide discretion in classifying items for the purposes, so long as it refrains from clear and hostile discrimination against particular persons or classes. (636-E)

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East India Tobacco Co v. State of A.P. [1963] 1 SCR 404 at p. 411; P.M. Ashwathanarayana Shetty v. State of Karnataka. [1988] Supp.3 SCR 155 at p.m 188; Federation of Hotel & Restaurant Association of India v. Union of India, [1989] 2 SCR 918 at p. 949, Kerala Hotel & Restaurant Association v. State of Kerala, [1990] 1 SCR 516 at p. 530: Gannon Dunkerley, and Co. v. State of Rajasthan, [1993] 1 SCC 364 at 397; and San Antonio Independent School District v. Bodriques, 411 US 1 at p. 41, referred to.

2.03. just as a difference in the treatment of persons similarly situate leads to discrimination', so also discrimination can arise if persons who are unequals, i.e. differently placed. are treated similarly. In such a case failure on the part of the legislature to classify the persons who are dissimilar in separate categories and applying the same law, irrespective of the differences brings about the same consequence as in a case where the law makes a distinction between persons who are similarly placed. A law providing for equal treatment of unequal objects transactions or persons would he condemned as discriminatory if there is absence of rational relation to the object intended to he achieved by the law. (637-A-B)

K. T Moopil Nair v. The State of Kerala & Anr., [1961] 3 SCR 77, distinguished.

Jalan Trading Co. (pvt.) Ltd. v. Mill Mazdoor Union, [1967] 1 SCR 15 and Twyford Tea Co. Ltd. & Anr v. The State of Kerala & Anr., [1970] 3 SCR 383, referred to.

2.04. In the instant case, the legislature has prescribed different rates of tax by classifying theatres in the different classes, namely, air-conditioned,air-cooled, ordinary (other than air-conditioned and air-cooled), permanent and semi-permanent and touring and temporary. The theatre% have further been categorized on the basis (of the type of the local area in which they are situate. It cannot, therefore, be said that there has been no attempt on the part of the legislature to classify the cinema theatres taking into consideration the differentiating circumstances for the purpose of imposition of tax. (638-G-H)

2.05. In relation to cinema theatres it can he said that the attendance in the various cinema theatres within a local area would not be uniform and would depend on factors which may vary from time to time. But this does not mean that cinema theatres in a particular category of local area will always

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be at a disadvantage so as to be prejudicially affected by a uniform rate as compared to cinema theatres having a better location in the same local area. The contention that the impugned provisions are violative of right to equality guaranteed under Article 14 (if the Constitution on the basis that unequals are being treated equally cannot be accepted. (639-B-C)

3. The provision for enhancement contained in sub-section (16) of section 5 relates to the cases. There the proprietor of a cinema theatre opts for payment of weekly consolidated amount. Since the proprietor has the option to opt for the said scheme he cannot complain that the scheme suffers from inequality. on account of absence of a corresponding provision for reduction of amount of tax. (639-E)

JUDGMENT:

CIVIL APPELLATE JURISDICTION: of 1986 etc. etc. Civil Appeal No. 1527 from the Judgment and Order dated 7.8.1984 of the Andhra Pradesh High Court in Writ petition No. 8173 of 1984. A.K. Ganguly. M.B. Shetye, A. Subha Rao, B, Kanta Rao, T.V.S.N. Chari, Ms. Bharathi Reddy and Ms. Promila for the appearing parties.

The Judgment of the Court was delivered by S.C. AGRAWAL ,J : These appeal and special leave petitions raise Common questions relating, to the constitutional validity of Sections 4 and 5 of the Andhra Pradesh Entertainments Tax, 1939 (hereinafter referred to as 'the Act'). as amended by Act 24 of 1994, providing for imposition of entertainments tax it) respect of entertainments held in cinema theatres located in the State of Andhra Pradesh.

The Act has been enacted to provide for the levy of taxes on amusements and other attainments. Prior to January 1. 1984, Section 4 of the Act provided for levy of entertainment tax at a rate fixed on the basis of percentage of the payment made by a person for admission to any entertainment. In addition, there was a provision in Section 4-A for levy of a fixed amount, by way of "show tax", for each show. By Act 59 of 1976, Section 4-C was introduced in the Act and Section 5 of the Act was substituted. under Section 4-C, it was provided that in respect of entertain-

ments held within tile jurisdiction of any local authority whose population did not exceed 25,000, a tax for every entertainment show would be levied, not on the basis of each payment for admission, but at a certain percentage of the gross collection capacity per show. The percentages for such levy were fixed according to the population of the local authority within the jurisdiction of which the entertainments were held. 'Gross collection capacity per show was defined in the Explanation to Section 4-C to mean the notional aggregate of all payments for admission the proprietor would realise per show, if all the seats or accommodation as determined by the licensing authority under the Andhra Pradesh Cinemas (Regulation) Act, 1966 in respect of the place of entertainment are occupied, and calculated at the maximum rate of payments for admission as determined by the said licensing authority. The levy of tax in the manner as prescribed under Section 4-C could be

dispensed with if the proprietor of the theatre opted for the composition scheme contemplated by Section 5 whereunder it was open to a proprietor to enter into an agreement with the prescribed authority to compound the tax payable under Section 4-C for a fixed sum which was to be arrived at in accordance with the formula prescribed under Section 5. According to this formula, the tax was payable on the basis of a percentage of the gross collection capacity per show for the fixed rounds of shows for the whole year and the number of shows was fixed on the basis of the number of shows exhibited in the previous year. This arrangement continued till December 31, 1983, whereafter the provisions of Sections 4.4-A and 5 were amended by Act No. 24 of 1984. The provisions of Sections 4,4-A and 5, as amended by Act 24 of 1984, were as follows "Section 4. (1) There shall be levied and paid to the State Government a tax on the gross collection capacity on every show (hereinafter referred to as the entertainments tax) in respect of entertainments held in the theatres specified in column (2) of the table below and located in the located areas specified in the corresponding entry in column (1) of the said table, calculated at the rates specified in the corresponding entry in column (3) thereof. THE TABLE _____ Local Area. Theatre Rate of tax on the gross collection ca-

pacity per show _____ (1) (2) (3) _____

(a) Municipal corporations (i)Air-conditioned 29 per cent and the Secunderabad Cantonment area and (ii) Air-cooled 28 per cent the contiguous area (iii)Ordinary 25 per cent thereof. (other than air-

conditioned and air-

cooled)

(b) Selection grade muni- (i) Air-conditioned 28 per cent cipalities and contiguors area of (ii)Air-cooled 27 per cent two Kilometres (iii)ordinary (other 24 per cent thereof. than air-conditioned 27 per cent and air-cooled)

(c) Special tirade munici- (i) Air-conditioned 27 per cent palities and contiguous (ii) Air- cooled 26 per cent area of two Kilometres (iii) Ordinary 23 per cent thereof. (other than air-

conditioned and air-cooled)

(d) First grade munici-

palities and conti.- (i) Air-conditioned 26 per cent guous area of two (ii) Air-cooled 25 per cent Kilometres thereof. (iii) Ordinary (other 22 per cent than air-conditioned and air-cooled)

(e) Second grade munici- All categories 21 per cent palities and contiguous area of two Kilometres thereof.

(f) Third grade municipalities, All categories 20 per cent and contiguous area of two Kilometres thereof.

(g) Gram panchayats, selec- (i) Permanent and 19 per cent tion grade gram panchayats, semi-permanent 20 per cent townships and any other (ii) Touring and local areas. temporary Explanation.- For the purpose of this section and section 5, the term 'gross collection capacity per show' shall mean the notional aggregate of all payments for, admission, the proprietor would realise per show if all the seats or accommodation as determined by the licensing authority under the Andhra Pradesh Cinemas (Regulation) Act, 1955, in respect of the place of entertainment are occupied and calculated at the maximum rate of payments for admission as determined by the said licensing authority.

(2). The amount of tax under sub-section (1) shall be payable by the proprietor on the actual number of shows held by him in a week."

> "Section 4-A. (1) In addition to the tax under Section 4, there shall be levied and paid to the State Government in the case of entertain- ments held in the local areas specified in column (1) of the Table below, a tax calculated at the rates specified in the corresponding entry in column (2) thereof; THE TABLE
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>
> | Local Areas | Rate of tax for every show |
> |---|---|
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> ---
>
> (a) Municipal Corporation and the Six rupees Secunderabad cantonment area and contiguous area of two Kilometers thereof.
>
> (b) Selection grade, Special grade and the Six rupees first grade municipalities and contiguous area of two kilometers thereof.
>
> (c) Second grade and Third grade Four rupees municipalities and contiguous area of two kilometers thereof.
>
> (d) Gram Panchayats, selection grade Two rupees.

gram panchayats, townships and any other local areas.

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(2) The tax leviable under sub-section (1) shall be recoverable from the proprietor. (3) The provisions of this Act other than Sections 4, 6 and 13 shall, so far as may be, apply in relation to the tax payable under subsection (1) as they apply in relation to th e tax payable under Section 4 "

"Section 5. (1) In lieu of the tax payable under section 4. in the case of the entertainments held in the theatres specified in column (2) of the table below and located in the local areas specified in the corresponding entry in column (1) of the said table, the proprietor thereof may, at his option and subject to such conditions as may be prescribed, pay the amount of tax to the State Government every week as specified in the corresponding entry in column (3) thereof :

THE TABLE

Local Area Theatre Amount of tax

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(1) (2) (3)

(a) Municipal corpora- tions and the Secunderabad canton- ment area and the contiguous area of two kilometrers thereof.	(i) Air-conditioned	24 per cent of the gross collection capacity per show multi- plied by 22
	(ii) Air-cooled	23per cent of the gross collection capacity per show multiplied by 22.
	(iii) Ordinary (other than air-conditioned and air-cooled)	20 per cent of the gross collection capacity per show multiplied by 22
(b)Selection grade muni- cipalities and contiguous area of two kilometrers thereof.	(i) Air-conditi- oned	23 per cent of the gross collection capacity per show multiplied by 22.
	(ii) Air- cooled	22 per cent of the gross collec- tion capacity per show multiplied by 22.
	(iii) Ordinary (other than air-conditioned and air-cooled)	19 per cent of the gross collection capacity per show multiplied by 22.

(c)Special grade munici- (i) Air-conditi- 22 per cent of the palities and contiguous oned gross show multi-

area of two kilo- lied by 21.

metrers thereof.

(ii) Air- cooled 21 per cent of the gross collection capacity per show multiplied by 21.

(iii) Ordinary 18 per cent of the (other than air- gross collection conditioned and capacity per show air-cooled) multiplied by 21.

(d)First grade municipali- (i) Air-conditi- 21 per cent of ties and contiguous oned gross show area of two kilo- multilied by 21.

metrers thereof.

(ii) Air-cooled 20 per cent of the gross collection capacity per show multiplied by 21.

(iii) Ordinary 17 per cent of the (other than air- gross collection conditioned and capacity per show air-colled) multiplied by 21.

(e) Second grade muni- All-cate-ores 16 per cent of the cipalities and conti- gross collection guors area of two capacity per Kilometres there of show.

(f) Third grade muni- All categores 15 per cent of the cipalities and gross Collection contiguous area of capacity per show two Kilometres multiplied by 17.

thereof.

(g) Gram panchayats, (i) Permanent 15 per cent of the selection grade gram and semi- gross collection panchayats, townships permanent capacity per and any other show multi-

local areas.		plied by 14.
	(ii) Touring and temporary	14 per cent of the gross collection capacity per show multiplied by 7.

Explanation. For the purposes of computing the gross collection capacity per show in respect of any place of entertainment, the maximum seating capacity or accommodation and the maximum rate of payment for admission determined by the licensing authority under the Andhra Pradesh Cinemas (Regulation) Act, 1955, as on the date when the proprietor is permitted to pay tax under this section shall be taken into account.

(2)The amount of tax under sub-section (1) shall be payable by the proprietor irrespective of the actual number of shows held by him in a week.

(3)Any proprietor who opts to pay tax under this section shall apply in the prescribed form to the prescribed authority to be permitted to pay the tax under this section. (4)On being so permitted, such proprietor shall pay the tax for every week as specified in sub-section (1).

(5)The option permitted under this section shall continue to be in force till the end of the financial year in which such option is permitted.

(6)It shall be lawful for the prescribed authority to vary the amount of tax payable by the proprietor under sub-section (1) during the period of option permitted under this section any time, if there is an increase in the gross collection capacity per show in respect of the place of entertainment by virtue of an upward revision of the rate of payment for admission therein or of the seating capacity or accommodation thereof or where the local area in respect of which permission is granted is upgraded or if it is found for any reason that the amount of tax has been fixed lower than the correct amount. (7)Every proprietor who has been permitted to pay the tax under this section shall intimate to the prescribed authority forthwith such increase in the gross collection capacity per show in respect of the place of entertainment, failing which it shall be open to the pre- scribed authority by giving fifteen days notice to cancel the option so permitted.

(8)Where a proprietor fails to pay the amount of tax on the due date, such amount of tax shall be recoverable with interest calculated at such rate as may be prescribed.

(9) The amount of tax due under this section shall be rounded of to the nearest rupee and for this purpose, where such amount contains part of a rupee consisting of paise, then if such part if fifty paise or more it shall be increased to one rupee and if such part is less then fifty paise, it shall be ignored."

As a result of the said amendments, the earlier mode of levy of tax on the basis of the percentage of each payment for admission prescribed in Section 4 was replaced by a mode similar to that provided in Section 4-C, i.e., on the basis as prescribed percentage of the gross collection capacity per show. In the table appended below sub-section (1) of section 4 rates were fixed on the basis of a percentage of the gross collection capacity per show varying with the category of the local area in which the theatre was situated as well as on the nature of the theatre, viz. air- conditioned and air-cooled or ordinary (other than air- conditioned and air-cooled) or permanent, semi-permanent including touring and temporary theatres. In the Explanation to sub-section (1) of section 4, the term gross collection capacity per show' was defined in the same terms as in the Explanation to Section 4-C, to mean the full collection per show if all the seats in the theatre are occupied. In sub-section (2) of section 4, it was specifically provided that the amount of tax under sub- section (1) shall be payable by the proprietor on the actual number of shows held by him in a week. Section 5 gave an option to the proprietor to pay a weekly consolidated amount irrespective of the number of shows actually held by him and the said amount was fixed on the basis of the prescribed number of shows per week. The number of shows varied with the nature of the theatre as well as the category of the local area in

which it was situate. In section 4-A, a fixed amount was leviable by way of show tax on each show. A number of writ petitions were filed in the High Court to challenge the validity of sections 4, 4-A and 5 of the Act, as amended by Act 24 of 1984. The said writ petitions were decided by a division bench of the High Court by judgment dated July 19, 1984.

The constitutional validity of the provisions was challenged on three grounds, viz. : (i) the levy of entertainment tax on the basis of gross collection capacity without reference to the actual amount collected or the actual number of tickets sold or the number of persons admitted was ultra vires the legislative power conferred on the State Legislature under entry 62 of List II of the Seventh Schedule; (ii) section 4 was hit by Article 14 of the Constitution inasmuch as by treating unequals as equals, it gave rise to discrirmination amongst different theatres situate within the same local area; and (iii) the levy of entertainment tax under section 4 being exproprietory amounts to an unreasonable restriction on the right guaranteed to the petitioners by Article 19 (1) of the Constitution, and was not saved by clause (6) of Article 19. Relying upon the decisions of this Court in Western India Theatres v. Contonment Board, 1959 Supp. 2 SCR 63, Y. V. Srinivasamurthy vs. State of Mysore, AIR 1959 SC 894, and State of Bombay v. R.M.D. Chamarbaugwala, AIR 1957 SC 699, the High Court has held that the State Legislature was competent to levy the impugned tax under entry 62 of list 11 of the Seventh Schedule to the Constitution since the said head of legislative power empowers imposition of tax upon entertainments and amusements and not on the persons entertained or the persons provided amusement and it has to be paid by the persons who provides the entertainment or amusement. The High Court further held that so long as the tax levied retains the character of entertainment tax, the Legislature is competent to adopt such basis or such measure, or such method of levy, as it thinks appropriate. The High Court rejected the contention that the only method in which Legislature can levy the entertainment tax is that prescribed in the old Section 4, i.e., on the basis of the payment of admission. The challenge on the around of Article 14 was negatived by the High Court on the view that wide discretion is allowed to the Legislature in the matter of classification and in the matter of selection of persons to be taxed and that the two-fold classification made by section 4 could not be said to be either discriminatory or arbitrary much less could it be said that it metes out hostile discrimination to certain theatres. The High Court also observed that since it was not possible to predicate absolute equality between two theatres, and also because the situation and economics of each theatre are different, it is impossible to expect, or call upon the Legislature to evolve such classification which would meet every conceivable case and which would not result in prejudice even to a single theatre. It was observed that different rates have been prescribed for different local areas and for different types of theatres, i.e. ordinary, air-cooled and air-conditioned and the Legislature took note of the fact that rate of occupancy in villages will be lower compared to towns, and similarly, in bigger towns there will be greater rate of occupancy, and finally in cities, the rate of occupancy would be even higher and it could not be said that this expectation was unrealistic, or seunreasonable as to call for interference by the court. As regards the challenge based on Article 19 (1) (g), the High Court has taken note of the letter dated July 26, 1983 addressed by the Andhra Pradesh Film Chamber of Commerce, to the Hon'ble Chief Minister of Andhra Pradesh wherein the exhibitors not only asked tax which suggestion was accepted by the Government with certain modifications varying from 2 to 4% over the rates suggested by the Association. The High Court observed that the rates of tax that were prescribed under section 4 based on an average expected occupancy rate of less than 50 per cent to 66 per cent, could not be

said to be either unreasonable or exproprietory. The High Court, however, held that the agreements which had already been entered into by the proprietors of cinema theatres under section 5, as it stood prior to January 1, 1984, would be effective and valid for the period for which they were entered into. The High Court has also observed that merely because the form for exercise of option, as contemplated under sub-section (3) of section 5, had not been prescribed, it could not be said that section 5 had not come into operation or was unenforceable and that it was open for the proprietor to send an intimation on an ordinary paper and the authority would be bound to treat it as proper intimation. The High Court rejected the contention that section 5 was discriminatory inasmuch as it did not provide for reduction of the composition amount in case of reduction of seating capacity of a theatre, during the period of one year for which the option was exercised although under sub-section (6) of section 5 the provision had been made for enhancement of the composition amount in case the seating capacity/accommodation or the rates of payment for admission were enhanced. The High Court observed that section 5 was only optional and no one was compelled to be governed by it or to opt for the composition scheme contained in section 5 and that according to the said scheme the option once exercised was in force till the end of the financial year in which such option was permitted and that if a person opts to be governed by section 5 he does so with his eyes open and he must be deemed to have accepted all the conditions and features of the scheme and it was not open to him to say that he would avail of the beneficial provisions of the scheme, while rejecting those features which are not advantageous to him.

C.A.Nos. 4642-47/84,193-221/85,222/85, 223/85,224-28/85. 229, 232-34/ 85, 1468/85 and 1469-70/85 have been filed against the said decision of the High Court dated July 19, 1984. C.A. Nos. 5722/85, 1527/86, and SLP (C) No. 3127/ 85 have been filed against the decision of the High Court dated August 7, 1984 which is based on the earlier decision dated July 19, 1984 and similarly C.A. Nos. 1858/89 and 4798/89 are directed against the decisions dated February 12, 1986 and March 30, 1998 based on the earlier decision dated July 19, 1984.

During the pendency of these appeals, the Act was amended by A.P. Act 23 of 1988 and A.P. Act 16 of 1991 whereby the Tables below Sections 4,4-A and 5 were substituted and sub- Section (6-A) was inserted in Section 5 whereby provision was made for reduction of the amount of tax payable by the proprietor during the financial year if there is a reduction in the seating capacity or in the accommodation of the place of entertainment at any time during the period of six months commencing from the 1st day of April and ending with 30th day of September or from the 1st day of October and ending with 31st day of March of any financial year.

The learned counsel appearing for the appellants have assailed the constitutional validity of sections 4 and 5 on two grounds, viz. : (1) that the impugned provisions do not fall within the ambit of the legislative power conferred on the State Legislature under Entry 62 of List II of the Seventh Schedule of the Constitution-, and (2) that the impugned provisions were violative of the right to equality guaranteed under Article 14 of the Constitution inasmuch as they treated unequals as equal by imposing tax at a uniform rate on a particular class of cinema theatres irrespective of their location and occupancy.

While considering the question as to legislative competence of the State Legislature, it is necessary to bear in mind that the impugned provisions provide fir imposition of a tax and a tax has two distinct elements, viz., subject of the tax and the measure of the tax. The subject of the tax is the person, thing or activity on which the tax is imposed, and the measure of the tax is the standard by which the amount of tax is measured. The competence of the Legislature to enact a law imposing a tax under a particular head of the legislative list has to be examined in the context of the subject of the tax. If the subject of the tax falls within the ambit of the legislative power conferred by the head of legislative entry, it would be within the competence of the Legislature to impose such a tax. It is, therefore, necessary to examine the scope of the legislative entry, viz., Entry 62 of List II, which is invoked in support of the competence of the State Legislature to impose the tax and ascertain whether the subject of the tax imposed by the impugned provisions falls within the ambit of the said entry. Entry 62 of List 11 is as follows "62. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling The said entry is in pari materia with entry 50 of the Provincial List in the Seventh Schedule to the Government of India Act, 1935. Construing the said entry, this Court, in the Western India Theatres v. Cantonment Board (supra), has rejected the contention that the entry contemplates a law imposing taxes on persons who receive or enjoy the luxuries or the entertainments or the amusements and has held "The entry contemplates luxuries, entertainments and amusements as objects on which the tax is to be imposed..... The entry, a,,, we have said, contemplates a law with respect to the matters regarded as objects and 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." (p.69) In that case, the Cantonment Board had imposed entertainment tax of Rs. 10 per show on the cinema houses of the appellant in the said appeal and Rs. 5 per show on others. Upholding the said imposition this Court has held-

> "It is a tax imposed on every show, that is to say, on every instance of the exercise of a particular trade, calling or employment. If there is no show, there is no tax..... The impugned tax is a tax on the entertainment resulting in a show". (p. 69-70) Similarly, in Y. V. Srinivasamurthy v. State of Mysore (supra), upholding the provisions of the Mysore Cinematograph Shows Act, 1951 enacted under the Constitution, which authorised levy of tax on conematograph shows at rates prescribed in a rising scale according to the seating accommodation and the cities where the cinematograph show was held, this Court following the decision in Western India Theatres case (supra) held that the said Act was validly enacted in exercise of the legislative power conferred by entry 62 of List II.

In the instant case, we find that prior to the enactment of Act 24 of 1984, Section 4 provided for levy of entertainment tax on the basis of each payment for admission to the cinema theatre and under Section 4-C, in respect of entertainments held within the jurisdiction of a local authority whose population did not exceed 25,000 the tax was levied on the basis of the prescribed percentage of the gross collection capacity per show. In other words, there were two modes for levy of the tax, one on the basis of the actual number of persons admitted to each show and the other on the basis of the percentage of the gross collection capacity per show. As a result of the amendments introduced by Act 24 of 1984, the system for levy of tax on the basis of number of persons actually admitted to each show was dispensed with and the tax was to be levied on the basis of the percentage of the gross

collection capacity per show and different percentages were prescribed depending on the type of the theatre and the nature of the local area where it was situated. Under section 5, an option was given to pay a tax on the basis of the prescribed percentage fixed for a fixed number of shows in a week irrespective of the number of shows actually held. It is not disputed that the tax as it was being levied prior to January 1, 1984, i.e, before the amendment of Section 4 by Act 24 of 1984, was a tax on entertainment falling within the ambit of entry 62 of List 11. The question is whether the alteration in the said mode of levy of tax by Act 24 of 1984 has the effect of altering the nature of the tax in a way that it has ceased to be a tax on entertainments and falls beyond the field of legislative competence conferred on the State Legislature by Entry 62 of List 11. In our view, the said question must be answered in the negative. The fact that instead of tax being levied on the basis of the payment for admission made by the persons actually admitted in the theatre it is being levied on the basis of the gross collection capacity per show calculated on the basis of the notional aggregate of all the payments for admission which the proprietor would realise per show if all the seats or accommodation in respect of the place of entertainment are occupied and calculated at the maximum rate of payments for admission, would not, in our opinion, alter the nature of the tax or the subject-matter of the tax which continues to be a tax on entertainment. The mode of levy based on 'per payment for admission' prescribed under Section 4(1) prior to amendment by Act 24 of 1984 necessitated enquiry into the number of shows held at the theatre and the number of persons admitted to a cinematheatre for each show and gave room for abuse both on the part of proprietor as well as other officers incharge of assessment and collection of tax. The mode of levy or measure of the tax prescribed under section 4(1), and substituted by Act 24 of 1984, is a more convenient mode of levy of the tax inasmuch as it dispenses with the need to verify or enquire into the number of persons admitted to each show and to verify the correctness or otherwise of the return submitted by the proprietor containing the number of persons admitted to each show and the amount of tax collected.

Prior to the enactment of Act 24 of 1984, tax was leviable on the basis of either of the two modes under Section 4(1) and4-C. On an examination of the rates prescribed under both the modes, the High Court found that under the system of consolidated levy prescribed under Section 4-C the proprietor could break- even if the average rate of occupancy was 40%. As regards the rates prescribed under Section 4 and 5 as amended by Act 24 of 1984, the High Court has observed that the said rates are based on an average expected occupancy rate of less than 50% or 66% depending upon the area in which the theatre is situated. This would mean that the entertainment tax that would be collected over and above the average occupancy rate would constitute the profit of the proprietor. In the circumstances, it cannot be said that the adoption of the system of consolidated levy in Section 4(1) as amended by Act 24 of 1984 alters the nature of tax and it has ceased to be a tax on entertainments.

It has been urged that since both the modes of levy of tax were prevalent prior to the enactment of Act 24 of 1984, an option should have been given to the proprietor of a cinema theatre to choose between either of the two modes and that under the impugned provisions the choice is confined to two modes of assessment under the same system of consolidated levy based on the gross collection capacity per show, one on the basis on the gross collection capacity per show, under Section 4(1) and other on the basis of gross collection capacity per show for a prescribed number of shows per week

under section 5. We find no substance in this contention. Once it is held that tax on entertainment could be levied by either of the two modes, viz., per payment of admission or gross collection capacity per show, it is for the legislature to decide the particular mode or modes of levy to be adopted and whether a choice should be available to the proprietor of the cinema theatre in this regard. The legislature does not transgress the limits of its legislative power conferred on it under Entry 02 of List 11 if it decides that consolidated levy on the basis of gross collection capacity per show shall be the only mode for levy of tax on entertainments.

We are, therefore, unable to accept the contention urged on behalf of the appellants that the impugned provisions contained in Section 4 and 5 as amended by Act 24 of 1984 are ultra vires the legislative power conferred on the State Legislature under Entry 62 of List II.

The challenge to the impugned provisions on the basis of Article 14 is grounded on the principle that discrimination would result if unequals are treated equally are reliance is placed on the decision of this Court in K. T Moopil Nair v. The State of Kerala & Anr, [1961] 3 SCR 77. It has been urged that under section 4, as substituted by Act 24 of 1984, a uniform rate has been prescribed for cinema theatres of a particular class situate in different parts of the same local area although the average rate of occupancy in the cinema theatres located in different parts of the same local area is not the same and a cinema theatre which is located in the central part of the local area would have better rate of occupancy as compared to a theatre located in a remote part and further that the occupancy in the theatre depends on various of the factors which have not been taken into account. We find it difficult to accept the contention. Article 14 enjoins the State not to deny to any person equality before the law or the equal protection of the laws. The phrase "equality before the law" contains the declaration of equality of the civil rights of all persons within the territories of India. It is a basic principle of republicanism. The phrase "equal protection of laws" is adopted from the Fourteenth Amendment to U.S. Constitution. The right conferred by Article 14 postulates that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Since the State, in exercise of its governmental power, has, of necessity, to make laws operating differently on different groups of persons within its territory to attain particular ends in giving effect to its policies, it is recognised that the State must possess the power of distinguishing and classifying persons or things to be subjected to such laws. It is, however, required that the classification must satisfy two conditions namely, (i) it is founded on an intelligible differentia which distinguishes those that are grouped together from others; and (ii) the differentia must have a rational relation to the object sought to be achieved by the Act. It is not the requirement that the classification should be scientifically perfect or logically complete. Classification would be justified if it is not palpably arbitrary. [See: Re Special Courts Bill, [1979] 2 SCR 476 at pp. 534-5361. It there is equality and uniformity within each group, the law will not be condemned as discriminative, thou oh due to some fortuitous circumstance arising out of a peculiar situation some included in a class get and advantage over others, so long as they are not singled out for special treatment. [See: Khandige Sham Bhat v. Agricultural Income-Tax Officer, [1963] 3 SCR 809 at p. 8 171 Since in the present case we are dealing with a taxation measure it is necessary to point out that in the field of taxation the decisions of this Court have permitted the legislature to exercise an extremely wide direcretion in classifying items for tax purposes, so long as it refrains from clear and hostile discrimination against particular persons or classes. [See: East India Tobacco Co. v. State of A.P., 19631 1 SCR 404,

at p. 411, P.M. Ashwathanarayanan Shetty v. State of karnataka, 1988, Supp. 3 SCR 155, at p. 188, Federation of Hotel & Restaurant Association of India v. Union of India, [1989] 2 SCR 918, at p. 949, Kerala Hotel & Restaurant Association v. State of Kerala, [1990] 1 SCR 516, at p. 530, and Gannon Dunkerley and Co. v. State of Rajasthan, [1993] 1 SCC 364, at p. 3971.

Reference, in this context, may also be made to the decision of the U.S. Supreme Court in San Antonio Independent School District v. Bodrigues, 41 1 US 1 at p. 41, wherein Justice Stewart, speaking for the majority has observed "No scheme of taxation, whether the tax is imposed on property, income or purchases of goods and services, has yet been devised which is free of all discriminatory impact. In such a complex arena in which no perfect alternatives exist, the court does well not to impose too rigorous a standard of scrutiny lest all local fiscal schemes become subjects of criticism under the Equal Protection Clause."

Just a difference in treatment of persons similarly situate leads of discrimination, so also discrimination can arise if persons who are unequals, i.e. differently placed, are treated similarly. In such a case failure on the part of the legislature to classify the persons who are dissimilar in separate categories and applying the same law, irrespective of the differences, brings about the same consequence as in a case where the law makes a distinction between persons who are similarly placed. A law providing for equal treatment of unequal objects, transactions or persons would be condemned as discriminatory if there is absence of rational relation to the object intended to be achieved by the law.

In K T Moopil Nair v. State of Kerala (supra), this Court was dealing with a law providing for imposition of uniform land tax at a flat rate without having regard to the quality of the land or its productive capacity. The law was held to be violative of Article 14 of the constitution of the ground that lack of classification had created inequality. The said decision in K. T Moopil Nair's case (supra) has been explained by this Court is Jalan Trading Co. (Pvt.) Ltd. v. Mill Mazdoor Union, [1967] 1 SCR 15, in the context of challenge to the validity of section 10 of the Payment of Bonus Act, 1965 providing for payment of a minimum bonus of 4% by all industrial establishments irrespective of the fact whether they were making profit. This Court held that the judgment in Moopil Nair's case (supra) has not enunciated any broad proposition that when persons or objects which are unequals are treated in the same manner and are subjected to the same burden or liability discrimination inevitably results. It was observed :

> "It was not said by the Court in that case that imposition of uniform liability upon persons, objects or transactions which are unequal must of necessity lead to discrimination. Ordinarily it may be predicated of unproductive agricultural land that it is incapable of being put to profitable agricultural use at any time. But that cannot be so predicated of an industrial establishment which has suffered loss in the accounting year, or even over several years successively. Such an establishment may suffer loss in one year and make profit in another. " (p.35) It was further observed "Equal treatment of unequal objects, transactions or persons is not liable to be struck down as discriminatory unless there is simulta-

neously absence of a rational relation to the object intended to be achieved by the law."

(p.36) The limitations of the application of the principle that discrimination would result if unequals are treated as equal, in the field of taxation, have been pointed out by this Court in Twyford Tea Co. Ltd. & Anr. v. The State of Kerala & Anr., [1970] 3SCR 383, wherein tax at a uniform rate was imposed on plantations. Hidayatullah, CJ, speaking for the majority, while upholding the tax, has observed "It may also be conceded that the uniform tax falls more heavily on some plantations than on others because the profits ,ire widely discrepant. But does that involve a discrimination ? If the answer be in the affirmative hardly any tax direct or indirect would escape the same ensure for taxes touch purses of different lengths and the very uniformity of the tax and its equal treatment would become its undoing. The rich and the poor pay the same taxes irrespective of their incomes in many instances such as the sales- tax and the profession tax etc." (pp. 389-390) It was further observed :

"The burden is on a person complaining of discrimination. The burden is proving not possible 'inequality' but hostile 'unequal' treatment. This is more so when uniform taxes are levied. It is not proved to us how the different plantations can be said to be hostilely or unequally treated. A uniform wheel tax on cars does not take into account the value of the car, the mileage it runs, or in the case of taxis, the profits it makes and the miles per gallon it delivers. An ambassador taxi and a fiat tasi give different out turns in terms of money and mileage. Cinemas pay the same show fee. We do not take a doctrinaire view of equality." (p.393-94) In the instant case, we find that the legislature has prescribed different rates of tax by classifying theatres into different classes, namely, air-conditioned, air-cooled, ordinary (other than air-conditioned and air-cooled), permanent and semipermanent and touring and temporary. The theatres have further been categorized on the basis of the type of the local area in which they are situate. It cannot, therefore, be said that there has been no attempt on the part of the legislature to classify the cinema theatres taking into consideration the differentiating circum-

stances for the purpose of imposition of tax. The grievance of the appellants is that the classification is not perfect. What they want is that there should have been further classification amongst the theatres falling in the same class on the basis of the location of the theatre is each local area. We do not think that such a contention is well founded.

In relation to cinema theatres it can be said that the attendance in the various cinema theatres within a local area would not be uniform and would depend on factors which may very from time to time. But this does not mean that cinema theatres in a particular category of local area will always be at a disadvantage so as to be prejudicely affected by a uniform rate as compared to cinema theatres having a better location in the local area. It is, therefore, not possible to accept the contention that the impugned provisions are violative of right to equality guaranteed under Article 14 of the Constitution on the basis that unequals are being treated equally.

Another contention that has been urged on behalf of the appellants is that while provision was made under sub- section (6) of section 5 for enhancement of the amount of tax in the event of increase in the amount of gross collection capacity, there was no corresponding provision for reduction for the amount of tax in the event of reduction in the gross collection capacity. The said provision for enhancement contained in sub-section (6) of section 5 relates to the cases where the proprietor of a cinema theatre opts for payment of weekly consolidated amount. Since the proprietor has the option to opt for the said scheme he cannot complain that the scheme suffers from inequality on account of absence of a corresponding provision for reduction of amount of tax. In any event the said grievance has how been removed by the introduction of sub-section (6-A) in section 5 by amendments, introduced in the Act by A.P. Act 23 of 1988 and A.P. Act 16 of 199 1. In the result, we find no merit in these appeals and the special leave petition and they are accordingly dismissed. The parties are, however, left to bear their own costs. V.P.R. Appeals dismissed.