The Western India Theatres Ltd.

Vs

The Cantonment Board, Poona, Cantonment

Civil Appeal No. 145 of 1955

(CJI S. R. Dass, S. K. Das, P. B. Gajendragadkar, K. N. Wanchoo, M. Hidayatullah JJ)

16.01.1959

JUDGMENT

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 (II of 1924), the respondent proposed to make, with the previous sanction of the Central Government, certain amendments in the notifications 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 | show2. Circus Rs. 2-0-0 per show3. Horse Races Rs. 100-0-0 per day of race meetings.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 Government in Council, with the previous sanction of the Government 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 show2. Circus Rs. 2-0-0 per show3. 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 II 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 :-

#.....
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(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 entertainments 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, therefore, 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 [[1955] 1 S.C.R. 829.], 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 construction 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 regarded, 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 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 or 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 [[1951] S.C.R. 1045.] and Shri Rama Krishna Dalmia v. Shri Justice S. R. Tendolkar [[1959] S.C.R. 279.]. 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 imposed 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 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.

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