

East India Hotels and Another

Vs

State of West Bengal and Others

Civil Appeal No. 252 of 1976

(K. Jagannatha Shetty, R. M. Sahai JJ)

12.07.1990

ORDER

1. This appeal is directed against the judgment of the High Court upholding the validity of the West Bengal Entertainment and Luxuries (Hotels and Restaurants) Tax Act, 1972 (West Bengal Act 21 of 1972). The principal challenge is against the validity of Section 3 and 4.

2. Section 3 provides :

"3. An entertainment tax shall be payable by every person who is admitted into or enters any place, within either a hotel or restaurant, which is provided with luxury, where an entertainment is provided, and such tax shall be calculated at the rate of 10 per centum of the total sum paid or payable by such person for all the services including any fee for admission into such place of entertainment :

Provided that where payment is charged for admission to the place of entertainment, the entertainment tax under this section shall in no case be less than 25 per centum of such payment for admission to the place of entertainment."

3. Section 4 reads :

"4. There shall be charged, levied and paid to the State Government a luxury tax by the proprietor of every hotel and restaurant in which there is provision for luxury and such tax shall be calculated at the rate of an annual sum of rupees one hundred for every ten square metres or part thereof in respect of so much of the floor area of the hotel which is provided with luxury."

4. To make the picture complete it is also necessary to refer to the definition of entertainment and luxury.

Section 2(b) defines :

2(b)."entertainment" means any exhibition, performance, amusement, game, sport, cabaret, dance or floor show and includes performance by any singer, musician or bandsman provided in any hotel and restaurant;

Section 2(c) :

2(c)."entertainment tax " means tax payable under Section 3 of this Act;

Similarly luxury has been defined under Section 2(d) as follows :

2(d). "luxury" means provision for air-conditioning through air-conditioner or central air-conditioning or any other mechanical means provided in any of the rooms, or in any part of a building which constitutes a hotel or restaurant;

Luxury tax means as defined under Section 2(e) :

5. Luxury tax, as is clear from the definition, is on hotels and restaurants which provide facilities visualised in it. Entertainment tax, however, is leviable only on those hotels and restaurants which in addition to luxury provide entertainment. Validity of both the sections was upheld by Calcutta High Court. The Single Judge relied on Spences Hotels Pvt. Ltd. v. State of West Bengal. When the matter was taken in appeal the Division Bench dismissed it relying on Om Prakash Puri v. State West Bengal. Spences Hotels Pvt. Ltd. relied by learned Single Judge was on Section 4. It has been affirmed by the Constitution Bench in Express Hotel Pvt. Ltd. v. State of Gujarat. Validity of Section 4 was upheld and the argument that Section 4 envisages a tax on the mere existence of luxury and is levied even if the luxury is not utilised by any person, therefore, it was beyond legislative competence was repelled. Further submission that there must be both giving and receiving of the luxury and that a tax on the mere existence of luxury would be insufficient to support a law imposing the tax, also did not necessarily be the actual utilisation or the actual consumption of the luxury. Any luxury which can reasonably be said to amenable to a potential consumer does provide the nexus for valid enactment. No more therefore, is required to be said.

6. Turning to Section 3 the problem in our opinion presents really no difficulty as whatever has been said by this Court in relation to Section 4 is equally applicable to validity of Section 3. We do not find any merit in the submission that the provision is bad because taxable event is service rendered and not entertainment. In our opinion it ensures certainty.

7. In the result the appeal fails and is dismissed. But there shall be no order as to costs.

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