

Om Prakash Puri and Another

Vs

State of West Bengal and Others

Civil Appeal No. 4 of 1977

K. N. Saikia, M. M. Punchhi JJ)

15.02.1991

JUDGMENT

SAIKIA, J. –

1. This appeal by certificate is from the judgment of the Calcutta High Court dated March 4, 1975 passed Appeal No. 156 of 1974.
2. The appellants in partnership have been carrying on business of restaurants under the name and style of Trinca's at No. 17-B, Park Street Calcutta, providing food and drinks (alcohol and non-alcohol) to the customers under valid licences. Sometimes musical performances are also arranged. The restaurants are provided with air conditioning plant.
3. Under the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972 as amended by the Act of 1974, hereinafter referred to as 'the Act', the respondents by their Memo No. 4942/A.T. dated December 9, 1972 called upon the appellants to make ad hoc payment of luxury tax calculated at Rs. 2,40,000. The President of the Hoteliers' Association made a representation against this illegal tax which was turned down by the respondents, and thereafter the appellants challenged the validity of this action in the Calcutta High Court by filing Writ Petition No. 358 of 1973 on May 16, 1973. The appellants contended, inter alia before the High Court that the levy was unreasonable restriction on carrying the business; the Act was not meaningful and purposeful; the rules were confiscatory in nature; and the mode of calculation was not in conformity with the main object and purpose of the Act. The learned Single Judge of the High Court dismissed the writ petition relying on the judgment passed on March 6, 1974 in Writ Petition No. 338 of 1973 wherefrom Civil appeal No. 406 of 1976 was filed in this Court.
4. From the above order of the learned Single Judge, the appellants filed Appeal No. 156 of 1974 on June 26, 1974 before the Division Bench of the Calcutta High Court contending that the legislature cannot enlarge the scope of Entry 62 and seek to impose a tax on expenditure incurred by a customer on services rendered to him including food and drinks. The High Court held that Section 2(b) defined entertainment but Section 2(c) defined entertainment tax and under the Act entertainment tax meant tax payable under Section 3 of the Act. A clear distinction had been made between entertainment and entertainment tax and in this case the High Court was concerned only with entertainment tax as defined in Section 2(c). The second submission before the High Court was whether the Stated legislature had the competence to impose entertainment tax payable under Section 3 of the Act and the High Court held that Section 3 was a valid piece of legislation. The argument of the appellants was that tax imposed by Section 3 was discriminatory and it violated Article 14 of the Constitution. The High Court held that the differentia made in Section 3 had a

rational relation to the object sought to be achieved by the statute. The last submission was whether the persons enjoying the same facilities had been treated differently as the section had imposed a maximum tax of 15 per cent on amount paid or payable by the customer. The High Court held that since a distinction had to be maintained between Section 2(b) and Section 2(c), the learned counsel's argument on discrimination could not be acceded to. The appeal was accordingly dismissed, but certificate of fitness to appeal was granted.

5. The contentions raised in this appeal are the same as were raised in Civil appeal No. 406 of 1976 (Spences Hotel Pvt. Ltd. v. State of W.B., (1991) 2 SCC 154) which has just been dismissed. In East India Hotels Ltd. v. State of West Bengal (1990 Supp SCC 755 : AIR 1990 SC 2029) this Court held that whatever has been said by this Court in relation to Section 4 of the Act will be equally applicable to Section 3 of the Act. Consequently, for the above reason and for the reasons stated in our judgment in Civil Appeal No. 406 of 1976, we dismiss this appeal also with costs quantified at Rs. 5000 (Rupees five thousand).

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