Om Prakash Puri and Anr.

Vs

State of West Bengal and Ors.

Civil Appeal No. 4 of 1977

(K. N. Saikia, Madan Mohan Punchhi JJ)

16.02.1991

JUDGMENT

K. N. SAIKIA, J.-

This appeal by certificate is from the Judgment of the Calcutta High Court dated 4.3. 1975 passed in appeal No. 156 of 1974.

The appellants in partnership have been carrying on business of restaurants under the name and style of Trinca's at No. 17B, Park Street Calcutta, providing food and drinks (alcohol and non-alcohol) to the customers under valid licenses. Sometimes musical performances are also arranged. The restaurants are provided with air conditioning plant.

Under the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972 as amended by the Act of 1974, hereinafter refereed to as 'the Act', the respondents by their Memo No. 4942/A.T. dated 9.12.1972 called upon the appellants to make ad hoc payment of luxury tax calculated at Rs. 2,40,000.00. Thee president of the Hotels' Association made a 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 16.5.1973. The appellants contended, inter ail before the High court that the levy was unreasonable restriction on carrying the business; the Act was not meaningful and purposeful; the rules were confiscator in nature; and the made 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 6.3.1974 in Writ Petition No. 338 of 1973 wherefrom Civil Appeal No. 406 of 1976 was filed in this Court.

From the above order of the learned Singh Judge, the appellants tiled Appeal No. 156 of 1974 on 26.6.1974 before the Division Bench of the Calcutta High Court contending that the legislature connate enlarge the scope of Entry 62 and seek to imposes a tax on expenditure incurred by a customer on services rendered to him including food and drinks. The High Court held that s. 2(b) defined entertainment tax but s. 2(c) defined entertainment tax and under the Act entertainment tax meant tax payable under s. 3 of the Act. A clear distinction had been made between entertainment and entertainment tax meant tax payable under s. 3 of Act and the High court held that s. 3 was a valid piece of legislation. The argument of the appellants was that tax imposed by s. 3 was discriminatory and it violated Art. 14 of the constitution. The High Court held that the different made in s. 3 had a rational relation to the object sought to be achieved by the statute. The last submission was whiter the persons enjoying the same facilities had been treated differently as the section had imposed a maximum tax of 15% on amount paid of payable by the customer. The High Court held that since a distinction had to be maintained between s. 2(b) and s. 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.

The contentions raised in this appeal are the same as were raised in Civil Appeal No. 404 of 1976 which has just been dismissed. In *East India Hotels. Ltd. v. State of west Bengal,* AIR 1990 SC 2029 this Court held that been said by this Court in relation to s. 4 of the Act will be equally applicable to s. 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. 5,000 (Rupees five thousand).

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