State of U.P. and Another

Vs

Kamla Palace

Civil Appeals No 662 of 1997

(S. P. Bharucha, R.C. Lahoti, N. Santosh Hegde JJ)

17.12.1999

JUDGMENT

R. C. LAHOTI J.-

1. This order shall govern the disposal of a bunch of appeals grouped into three and arising in the backdrop of events stated hereinafter.

2. The Uttar Pradesh Entertainments and Betting Tax Act, 1979 (U.P. Act 28 of 1979) was enacted and came into force in the State of U.P. on 1608-1981. It introduced the levy of the entertainment tax payable at a certain percentage on all payments for admission to nay entertainment. "Entertainment" as defined in the interpretation clause includes cinematography exhibitions amongst other. With a view to encouraging cinema construction the State of Uttar Pradesh extended a Scheme of grant-in-aid for permanent cinema house constructed within a specified period through a government order dated 17-09-1983. Permanent cinema house constructed under the Scheme depending on the population of the areas/towns wherein they were constructed were allowed grant-in-aid equivalent to 100%, 75, 50% respectively for the first, second and third years of construction in the areas/ places having a population of less than 20,000 but less than 1,00,000. In the areas / places having a population of less than 20,000 the amount of grant-in-aid. The conditions relevant for our purpose were:

> (i) that the grant-in-aid shall be admissible only to such cinema house which fixed their maximum entrance rates inclusive of tax at not more than Rs. 2.50;
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> (ii) that the District Magistrate shall permit the grant-in-aid after providing the licence in the pro forma enclosed with the government order; and
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> (iii) that the permission shall be effective after the cinema-owner signed the agreement contemplated by the Scheme.

The Scheme was extended from time to time with effect from 21-7-1986 and 18-7-1989. The phraseology and tenor of all such subsequent schemes is more or less similar to the Scheme of the year 1983 excepting that under the schemes of the years 1986 the benefit was available to such permanent cinema houses as fixed admission rate at not exceeding Rs. 5.

3. The U.P. Cinemas and Taxation Laws Amendment Act, 1989 (U.P) Act 12 of 1989) introduced Section 3-A in the body of the main Act which by an overriding effect over other provisions of the Act authorised the proprietor of a centrally air-cooler or centrally air-conditioned cinema to realise,

subject to prior permission of the District magistrate, an extra charge of 10 paise and 25 paise respectively over and above the admission fee during the period commencing on the 15th day of March and ending on the 15th day of September every year which amount was not to be taken into account for calculating the entertainment tax if the same was spent for providing the air-cooling or air-conditioning facility, as the case may be. The abovesaid Section 3-A was further amended by Act 14 of 1992. Section 3-A in its amended from along with the proviso appended to sub-section (1), which proviso is the bone of contention, is reproduced hereunder:

> "3-A. Extra charges for maintenance of cinema and air-cooled and air-conditioned facility- (1) Notwithstanding anything contained in this Act, the proprietor of a cinema may realise from the person making payment for admission to an entertainment in such cinema. –
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> a. an extra charge of one rupee which shall be utilised for maintenance of the cinema premises:
> b. in case of a centrally air-cooled or centrally air-conditioned cinema further extra charge of twenty-five paise and sixty paise for air-cooling or air-conditioning facility respectively during the period commencing on the fifteenth day of March in any year and ending on the fifteenth day of October next following:
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> Provided that the proprietor of a cinema receiving grant-in-aid from the State Government under clause (a) during the period such grant-in-aid is received by him."

4. The amount of extra charge permitted for maintenance of the cinema premises was 25 paise as introduced by Act 14 of 1992. It was revised to 1 rupee by U.P. Act 3 of 1995 with effect from 10-10-1994.

5. The validity of the amendment was challenged by a number of cinema houses/cinema-owners by filing several writ petitions. One such petition was filed by Kamla Palace. The principal ground of challenge was that the proviso appended to sub-section (1) of Section 3-A of the Act was discriminatory in nature and violative of Article 14 of the Constitution. A batch of writ petitions led by the writ petition filed by Kamla Palace was heard by a Division bench of the Allahabad High Court. By its judgment and order dated 10-7-1995 the Division Bench declared the proviso appended to sub-section (1), of the amended Section 3-A as ultra vires of the Constitution. Broadly stated the Division Bench formed an opinion that the object sought to be achieved by clause (a) of sub-section (1) of Subsection 3-A was to achieve maintenance of the cinema premises by cinema-owners who were finding it difficult to do so on account of serious competitive threats posed by video parlours and other sources of entertainment. Inasmuch as all the cinemas required maintenance without regard to the fact whether they were receiving any-grant-in-aid from the State Government or not, the distinction sought to bye drawn by the proviso between the cinemas receiving grant-in-aid and the cinemas not so receiving grant-in-aid had no nexus with the purpose sought to be achieved and hence fell four of Article 14 of the Constitution. Civil Appeal No. 664 of 1997 (State of U.P. v. Kamla Palace) and 53 other appeals (CAs Nos. 2150-57, 2159-77 and 2179-2204 of 1997) have been preferred against the division Bench judgment dated 10-7-1995.

6. It appears that there were other writ petitions also which were not disposed of by the common Division Bench judgment dated 10-7-1995. They came to be heard by another Division Bench judgment dated 10-7-1995. Having recorded its dissension, the Division Bench by its order dated 17-8-1995 directed the matter to be placed before the Chief Justice who was placed to constitute of

Full Bench to resolve the controversy. The Full Bench heard the matters in the writ petition filed by Natraj Chhabigrih, Sigra. By its judgment dated 22-3-1996 (reported as Natrajan Chhabigrib v. State of U.P) (AIR 1996 All 375 (FB)) the Full Bench overruled the Division Bench decision dated 10-7-1995 in Kamla Palace (supra). Civil Appeal No.663 of 1997 (Sushil Bhasin v. State of U.P) and CAs Nos. 2563, 4643, 8718 of 1997 and SLP (C) No. 11464 of 1998 have been filed by different cinema houses/cinema-owners against the Full bench judgment.

7. Emboldened by the Full Bench decision dated 22-3-1996 the State of U.P. moved an application for review was barred by time by 241 days. An application seeking condemnation of delay under Section 5 of the Limitation Act. By an order date 14-11-1996 the Division Bench dismissed the applications so filed forming an opinion that neither a case for condonation of delay was made out nor a case for exercising jurisdiction to review was made out. CA No. 662 of 1997 has been preferred by the State of U.P. putting in issue the order dated 14-11-1996.

8. We have heard the learned counsel for the parties in all the matters analogously. The issued arising for decision is whether the proviso appended to sub-section (1) of Section 3-A reproduced hereinabove suffers from the vice of invidious discrimination by carving out an artificial classification by dividing the cinema houses into two based on the criterion whether they receive or do not receive benefit of the incentive scheme propounded by the State Government and whether such classification ahs no nexus with the object sought to be achieved.

9.It was submitted by the learned counsel for the cinema-owners that whether a cinema receives or does not receive grant-in-aid by way of relief in the amount of entertainment tax does not make nay difference so far as the maintenance of a cinema house is concerned. It cannot be said that a cinema house receiving grant-in-aid requires no maintenance or lesser maintenance. The proviso therefore beings into existence two classes of cinemas by drawing an artificial dividing line. Both the types of cinemas need maintenance. The object sought to be achieved by beneficial provision incorporated in clause (a) of sub-section (1) of Section 3-A is to boost the maintenance of cinema house. The classification sought to be provided by the proviso does not fulfil the object sought to be achieved by the principal provision. The learned Standing Counsel for the State has on the other hand submitted that the distinction between cinemas receiving grant-in-aid under an incentive scheme of the State Government and the cinemas not so receiving the grant-in-aid is substantial and well defined. The incentive scheme is optional and adopted as a temporary measure by the State Government for encouraging permanent cinema house located in particular localities identifiable by reference to the population statistics of the previous census. The benefit conferred by the incentive schemes. Such cinema house are clearly distinguishable form those which do not take the benefit of the incentive scheme either because they do not opt for it by entering into an agreement thereunder or because they choose to appoint the rate of admission t above Rs 5. The cinemas falling in he latter category are entitled to make an extra charge of 25 paise (later on revised to 1 rupee) which has to be utilised for maintenance of the cinema premises.

10. We are of the opinion that the challenge laid to the constitutional validity of the proviso abovesaid is without nay merit and must fail. It was rightly turned down by the Full Bench in its order dated 22-3-1996. The view of the law taken by the division bench in its judgment dated 10-7-1995 was not a correct view of the law. The Division Bench its decision dated 22-3-1996[1]. We now proceed to examine the validity of the rival contentions advance before us.

11. Article 14 does not prohibit reasonable classification of persons, objects and transactions by the legislature for the purposes of attaining specific ends. To satisfy the test of permissible

classification, it must not be "arbitrary, artificial or evasive" but must be based on some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislature. (See Special (courts Bill, 1978, Re,((1979) 1 SCC 380 : (1979) 2 SCR 476) seven-Judge Bench; R.K. Garg v. Union of India., five –judge bench.) It was further held in R.K. Garg V. Union of India((1981) 4 SCC 675 : 1981 SCC (Tax) 30) that that laws relating to economic activities or those in the field of taxation enjoy a greater latitude than laws touching civil rights such as freedom of speech, religion etc. Such a legislation may not be struck down merely on account of crudities and inequities inasmuch as such legislation's are designed to take care of complex situations and complex problems which do not admit of solutions through any doctrinaire approach or straitjacket formulae. Their lordships quoted with approval the observations made by Frankfurter, J. in Morey v. Doud (354 US 457 : 1 L Ed 2d 1485 (1957):

> "In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the Judges have been overruled by events – self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability."

12. The legislature gaining wisdom from historical facts, existing situations, matters of common Knowledge and practical problems and guided by considerations of policy must be given a free had to devise classes – whom to tax or not to tax, whom to exempt or not to exempt and whom to give incentives and lay down the rates of taxation, if the test of Article 14 is satisfied by generality of provisions the courts would not substitute judicial wisdom for legislative wisdom.

13. In the case at hand it will be seen that at the point of time when the impugned provision was enacted, that is in the year 1992, there existed two classes of cinema-owners: one, those who were receiving grant-in-aid under some incentive scheme enunciated by the State Government; and two, such cinema-owners as were not receiving such grant-in-aid. It will be seen that the grant-in-aid schemes promulgated by the State Government were temporary schemes having a life span of three to five years which extended incentive depending on the population of the place where the cinema house was situated. It can be said, as was the plea where the cinema house was situated. It can be said, as was the plea raised before the High Court an also submitted by the learned Standing Counsel for the State of U.P. before us, that the incentive was available on a stagged scale depending on the size of population catered to by the cinemas situated in rural areas. The incentive was by way of grant-in-aid equivalent to a certain percentage of the quantum of entertainment tax collected by the cinema-owner for the State Government. As a condition precedent to the entitlement for such grant-in-aid the cinema-owners were subjected to a disability of not charging the fee for admission beyond a ceiling i.e. Rs 2.50, later on revised to Rs 5. Such cinema-owners who were not receiving any grant-in-aid under an incentive scheme and /or were free to charge fee for admission without any restriction as to the upper limit, i.e., their fee for admission to entertainment could be more than Rs 2.50 such classification is clear, well defined and real. The object sought to be achieved was to encourage the cinema-owners in boosting entertainment facilities available to the people. This was achieved by providing grant-in-aid under an incentive scheme to one class of cinema-owners and by permitting recovery of accretion amount by way of charges for maintenance to such other class of cinema-owners as were not receiving any grant-in-aid. Thus it cannot be said that the classification had no nexus with the object sought to be achieved. The Full Bench has during the course of its judgment observed, and rightly in our opinion, that if

the benefit conferred by the impugned amendment was made general, i.e., available to all the cinema-owners then the cinema-owners operating in rural areas would have secured double benefit – one, by way of grant-in-aid and the other, by way of recovering maintenance charges from the cinema-goers exempt from payment of entertainment tax and there is nothing wrong in the legislature having chosen not to confer such double benefit on the cinema-owners already enjoying the benefit of an incentive scheme and have the grant-in-aid released to them. Such option was available at the commencement of the Scheme and remained available throughout. Such of the cinema-owners as felt that the fixation of Rs 2.50 or Rs 5 as a ceiling on fee for admission was not beneficial to them and they would stand to benefit of recovering charges for maintenance conferred by the 1992 Amendment were always and at any time free to do so.

14. For the foregoing reasons we are of the opinion that the Division Bench was not right in passing the order dated 17-7-1995 striking down the amendment impugned before it. The Full Bench of the High Court has rightly upheld the vires of the impugned amendment in its order dated 17-8-1995. Civil Appeal No. 664 of 1997 (State of U.P. v. Kamla Palace) and 53 other appeals, i.e., CAs Nos 2150-57, 2159-77 and 2179-2204 of 1997are allowed. The judgment dated 10-7-1995 passed by the Division Bench allowing the writ petitions is set aside, Ca No. 663 of 1997 (Sushil Bhasin v. State of U.P.) and CAs Nos. 2563, 4643, 87 18 of 1997 and SLP (C) No. 11464 of 1998 are dismissed. The judgment of the Full Bench dated 22-3-1996 (reported as Natraj Chhabigih[1]) is confirmed. AC No. 662 of 1997 preferred against the order of the division Bench dated 14-11-1996 rejecting the application for review of the order dated 10-7-1995 is rendered redundant and is accordingly dismissed. There will be no order as to the costs in any or the appeals.

15. Before parting we would like to make it clear that some of the cinema-owners have collected the amount of maintenance charges under the 1992 Amendment under the interim orders passed by the High Court. They have not paid entertainment tax thereon and continued to retain the amount during the pendency of these appeals/ SLPs. In some of the cases interim orders have been passed by this Court also. However, as stated during the course of hearing, account/statements of such collections have been maintained and also verified from time to time by the authorities concerned. All interim orders stand vacated. The consequences as provided by law in the mater of liability to pay entertainment tax and recovery thereof shall follow.