

# SUPREME COURT OF INDIA

Aashirwad Films

Vs.

Union of India

C.A.No.709 of 2004

(S.B. Sinha and Markandey Katju JJ.)

18.05.2007

## JUDGMENT:

### S.B. SINHA, J :

1. Constitutionality of a notification issued by the Government of the Andhra Pradesh levying different rates of entertainment tax is in question in this Writ Petition filed by the petitioner herein under Article 32 of the Constitution of India. The petitioner herein carries on its business as a distributor of motion film at Hyderabad. The field of his activity is said to be distribution of Hindi films in the State of Andhra Pradesh.

2. The State of Andhra Pradesh made an Act known as "Andhra Pradesh Entertainment Tax Act, 1939". The said Act was enacted in terms of Entry No. 62 of List II of the VII Schedule of the Constitution of India which reads as under :-

"62. Taxes on luxuries including tax on entertainment, amusement and betting and gambling."

3. It is not in dispute that the rate of tax in respect of Telugu film was fixed at 10% and that of non-Telugu film has been fixed at 24%.

4. Representations were made to the Government of Andhra Pradesh to withdraw the said purported discriminatory tax by the Andhra Pradesh State Film Television and Theatre Development Corporation Ltd. in terms of its letter dated 9th/11th December, 2002 addressed to the Secretary to the Government, GA (I&PR) Department, Secretariat, Hyderabad as also other bodies and parliamentarians, which was not acceded to. The decision of the State was communicated to the petitioner by the Principal Secretary to the Government in terms of its letter dated 19.9.2003 stating;

"I invite attention to the reference cited and inform that Government have carefully examined your representation for grant of Tax relief to the Hindi Films on par with Telugu Films and consider that there is no need to extend such concession.

Accordingly the representation first cited is hereby rejected."

5. We may notice that the number of Hindi Films certified by the Censor Board is highest in India. Films made in Telugu, however, appears to be next in number as would appear from the following comparative chart:- COMPARATIVE CHART SHOWING NUMBER OF INDIAN FILMS (LANGUAGE-WISE)

CERTIFIED IN INDIA IN 2001, 2002 & 2003

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No. Language 2003 2002 2001

1. Hindi 222 218 230
2. Telugu 155 167 206
3. Tamil 151 178 196
4. Kannada 109 113 93
5. Malayalam 64 101 135
6. Bengali 49 47 48
7. Marathi 25 20 18
8. Assamese 17 17 13
9. Gujarati 14 15 12
10. Chhattisgarhi 4 12 14
11. English 23 12 8
12. Oriya 13 10 6 .

6. Mr. Anil Kumar Tandale, learned counsel appearing on behalf of the Writ Petitioner inter-alia would submit that the impugned levy is not justified inasmuch as;

1. It contravenes Article 351 of the Constitution of India.
2. It is discriminatory in nature and thus ultra-vires Article 14 thereof.

7. Mr. R. Sundaravaradhan, learned senior counsel appearing on behalf of the respondent on the other hand would submit that (i) Article 351 of the Constitution of India has no application in the instant case.

(ii) The State enjoys a greater latitude in imposing different types of taxes on different classes of the people.

(iii) In any event, as the Writ Petition does not contain any ground on the basis whereof, the plea of discrimination could be raised, the same should not be entertained by this Court.

8. We are not impressed with the submission of Mr. Anil Kumar Tandale, learned counsel that in a case of this nature, Article 351 of the Constitution of India would have any role to play. Assuming that there was a violation thereof, the same would not come within the purview of Part III of the Constitution of India and thus its application under Article 32 in relation thereto is not maintainable.

9. The State undoubtedly enjoys a greater latitude in the matter of a taxing statute. It may impose a tax on a class of people, whereas it may not do so in respect of the other class.

10. A taxing statute, however, as is well known, is not beyond the pale of challenge under Article 14 of the Constitution of India.

11. In *M/s. Chhotabhai v. Union of India* [AIR 1962 SC 1006], it was stated :

"(37) But it does not follow that every other Article of Part III is inapplicable to tax laws. Leaving aside Art. 31(2) that the provisions of a tax law within legislative competence could be impugned as offending Art. 14 is exemplified by such decisions of this Court as *Suraj Mal Mohta & Co. v. A.V. Visvanatha Sastri*, (1955) 1 SCR 448 : (AIR 1954 SC 545), and *Shree Meenakshi Mills Ltd., Maduari v. A.V. Visvanatha Sastri*, (1955) 1 SCR 787 : (S) AIR 1955 SC 13). In *Moopil Nair v. State of Kerala*, AIR 1961 SC 552 the Kerala Land Tax Act was struck down as unconstitutional as violating the freedom guaranteed by Art. 14. It also goes without saying that if the imposition of the tax was discriminatory as contrary to Art. 15, the levy would be invalid."

12. A taxing statute, however, enjoys a greater latitude. An inference in regard to contravention of Article 14 would, however, ordinarily be drawn if it seeks to impose on the same class of persons or occupations similarly situated or an instance of taxation which leads to inequality. The taxing event under the Andhra Pradesh State Entertainment Tax Act is on the entertainment of a person. Rate of Entertainment tax is determined on the basis of the amount collected from the visitor of a cinema theatre in terms of the entry fee charged from a viewer by the owner thereof.

13. It is not the case of the respondent that the imposition of different rates of entertainment tax is justified on any ground other than language. Entertainment of a person may not wholly depend upon the language of the film he sees. A film may be produced in one language and may be dubbed in another. Even within a State, people belonging to different regions may speak different languages, although the State language may be one.

14. It has been accepted without dispute that taxation laws must also pass the test of Article 14 of the Constitution of India. It has been laid down in a large number of decision of this Court that a taxation statute for the reasons of functional expediency and even otherwise, can pick and choose to tax some. Importantly there is a rider operating on this wide power to tax and even discriminate in taxation: that the classification thus chosen must be reasonable. The extent of reasonability of any taxation statute lies in its efficiency to achieve the object sought to be achieved by the statute. Thus, the classification must bear a nexus with the object sought to be achieved [See *Moopil Nair v. State of Kerala* AIR 1961 SC 552, *East India Tobacco Co. v. State of Andhra Pradesh* AIR 1962 SC 1733, *V. Venugopala Ravi Varma Rajah v. Union of India and Anr.* AIR 1969 SC 1094, *Assistant Director*

of Inspection Investigation v. Kum. A.B. Shanthi AIR 2002 SC 2188, The Associated Cement Companies Ltd. v. Government of Andhra Pradesh and Anr. AIR2006SC928]

15. Objectives in a statute may have a wide range. But the entire matter should also be considered from a social angle. In any case, it cannot be the object of any statute to be socially divisive in which event it may fall foul of broad constitutional scheme enshrined under Articles 19, 21 as also the Preamble of the Constitution of India.

16. In that behalf, it is important to read the object of a taxation statute on the touchstone of social values as mentioned in the Constitution. An adverse conclusion can be drawn if a particular statute goes against such values. It is on thing to say that the taxation statute does not further social good, but quite another when it disturbs the social fabric. The court may take adverse note in respect to statutes falling in the latter category. We herein note two cases where an attempt has been made to raise this discussion to the pedestal of Directive Principles. In Sri Srinivasa Theatre and Ors. v. Government of Tamil Nadu and Ors. [(1992) 2 SCC 643], this Court held: "Article 14 of the Constitution enjoins upon the State not to deny to any person 'Equality before law' or 'the equal protection of laws' within the territory of India. The two expressions do not mean the same thing even if there may be much in common

Equality before law is a dynamic concept having many facets. One facet - the most commonly acknowledged - is that there shall be no privileged person or class and that none shall be above law. A facet which is of immediate relevance herein is the obligation upon the State to bring about, through the machinery of law, a more equal society envisaged by the preamble and Part IV of our Constitution. For, equality before law can be predicated meaningfully only in an equal society i.e., in a society contemplated by Article 38 of the Constitution, which reads:

38. State to secure a social order for the promotion of welfare of the people. (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social, economic and political, shall inform all the institutions of the national life.

(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities, in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations. The instrument of taxation is not merely a means to raise revenue in India; it is, and ought to be, a means to reduce inequalities. You don't tax a poor man. You tax the rich and the richer one gets, proportionately greater burden he has to bear. Indeed, a few years ago, the Income-tax Act taxed 94p out of every rupee earned by an individual over and above Rupees one lakh. The Estate Duty Act, no doubt since repealed, Wealth-tax Act and Gift-tax Act are all measures in the same direction. It is for this reason that while applying the doctrine of classification -developed mainly with reference to and under the concept of "equal protection of laws" Parliament - is allowed more freedom of choice in the matter of taxation vis-a- vis other laws...In the matter of taxation it is, thus, not a question of power but one of constraints of policy - the interests of economy, of trade, profession and industry, the justness of the burden, its 'acceptability' and other similar considerations. We do not mean to say that taxation laws are immune from attack based upon Article 14. It is only that Parliament and legislatures are accorded a greater freedom and latitude in choosing the persons upon whom and the situations and stages at which it can levy tax. We are not unaware that this greater latitude has been recognised in USA and UK even without resorting to the concepts of 'equality before law' or "the equal protection of laws" - as something that is inherent in

the very power of taxation and it has been accepted in this country as well. In the context of our Constitution, however, there is an added obligation upon the State to employ the power of taxation - nay, all its powers ♦ to achieve the goal adumbrated in Article 38."

(Emphasis supplied)

17. In *Elel Hotels and Investments Limited and Others v. Union of India* [(1989) 3 SCC 698], Justice Venkatachaliah observed: "It is now well settled that a very wide latitude is available to the legislature in the matter of classification of objects, persons and things for purposes of taxation. It must need to be so, having regard to the complexities involved in the formulation of a taxation policy. Taxation is not now a mere source of raising money to defray expenses of government. It is a recognised fiscal tool to achieve fiscal and social objectives. The differentia of classification presupposes and proceeds on the premise that it distinguishes and keeps apart as a distinct class hotels with higher economic status reflected in one of the indicia of such economic superiority"

(Emphasis supplied)

18. The fact of the matter remains that it is difficult to laud the objective of the taxation statute in the instant matter which differentiates on the basis of language alone. This is definitely derisive of social attributes of the polity and Article 14 in its basic form i.e. equality before law. If any classification seeks to take refuge of exception under reasonable differentia category under Article 14, it must stay clear of the broad constitutional mandate as mentioned hereinbefore. In the instant matter, the classification solely on the basis of language, fails in its initiative to be called reasonable. The classification thus is arbitrary and as such violative of Article 14 of the Constitution of India.

19. In *Venkateshwara Theatre v. State of Andhra Pradesh and Others* [(1993) 3 SCC 677] this court observed:

"Since in the present case we are dealing with a taxation measure it is necessary to point out that in the field of taxation the decisions of this Court have permitted the legislature to exercise an extremely wide discretion in classifying items for tax purposes, so long as it refrains from clear and hostile discrimination against particular persons or classes."

20. It is also required to be realized that imposition of reasonable tax is a facet of good governance.

21. Another aspect of the matter cannot also be lost sight of. Taxing statute like penal statutes should receive strict construction. It cannot be arbitrary. [See *Bidhannagar (Salt Lake) Welfare Assn. V. Central Valuation Board & Ors.*, Civil Appeal No. 6345 of 2000 decided this date]

22. It may be true that the Court ordinarily is not concerned with the rate of tax unless the same is wholly arbitrary or confiscatory. However, it is well settled that generally speaking a tax imposed must be reasonable. We may only notice that a Constitution Bench of this Court in *Jindal Stainless Ltd. v. State of Haryana & Ors.* [JT 2006 (4) SC 611] stated : "38. Tax is levied as a part of common burden. The basis of a tax is the ability or the capacity of the taxpayer to pay. The principle behind the levy of a tax is the principle of ability or capacity. In the case of a tax, there is no identification of a specific benefit and even if such identification is there, it is not capable of direct measurement. In the case of a tax, a particular advantage, if it exists at all, is incidental to the States' action. It is assessed on certain elements of business, such as, manufacture, purchase, sale, consumption, use,

capital etc. but its payment is not a condition precedent. It is not a term or condition of a licence. A fee is generally a term of a licence. A tax is a payment where the special benefit, if any, is converted into common burden."

23. In *Hardev Motor Transport v. State of M.P. & Ors.* [JT 2006 (9) SC 454], this Court stated;

"29. Section 3 of the 1991 Act is the charging section. It provides that the tax shall be levied on every motor vehicle used or kept for use in the State at the rates specified in the First Schedule. The levy of tax, therefore, is on the motor vehicles. Its rate may vary keeping in view its use or the nature thereof"

24. This Court in this case is not concerned with the application of test of reasonableness while considering the constitutionality of a statute. The test of reasonableness, however, would vary from statute to statute and the nature of the right sought to be infringed or the purpose for imposition of the restriction. It is also not a case where a Section of the people have been picked up and they form the constituted class by itself. It is furthermore not a case where the State has picked up and chosen districts, objects, methods in the matter of imposition of tax. However, although a legislative body has a wide discretion, and taking statute may not be held invalid unless the classification is clearly unreasonable and arbitrary but it is also trite that class legislation is that which makes an improper discrimination by conferring particular privileges. "Class legislation is that which makes an improper discrimination by conferring particular privileges upon a class of persons, arbitrarily selected from a large number of persons, all of whom stand in the same relation to the privilege granted and between whom and the persons not so favoured no reasonable distinction or substantial difference can be found justifying the inclusion of one and the exclusion of the other from such privilege. A classification must not be arbitrary, artificial or evasive and there must be a reasonable, natural and substantial distinction in the nature of the class or classes upon which the law operates." (See *Weaver's Constitutional Law*, Page 397)

25. The purported classification only on the basis of language without anything more and in particular having regard to the difference in the rate of tax, in our opinion is *ex-facie* arbitrary. The burden was, therefore, on the State to show that the imposition was justified. Different rates of entertainment tax had not been levied having regard to the nature of theatre, the area where they were situated or extent of occupancy etc. It has not been explained as to whether cinema theatres exhibiting Telugu films suffer from any disadvantage which others had not been. It has not been shown as to why the same theatre where films in different languages are exhibited would be a class apart, only because at different times exhibit films produced in different languages. Moreover, how telugu films have been treated as a separate class have not been stated. Although the legislature enjoys a greater freedom and latitude in choosing person upon whom and suggest upon which it can levy tax, it is trite that taxing legislations are not immune from attack based on Article 14. It is also not the case of the respondent State that in imposing different rate of tax, they intend to achieve an avowed object envisaged under Part IV of the Constitution of India.

26. We, furthermore, may take judicial notice of the fact and keeping in view that this case was tagged with other matters where it had been brought to our notice that some States have been making hostile discriminations at the instance of the distributors of the films produced in local languages. State of Andhra Pradesh imposed the said tax on the said basis which is *per se* discriminatory in nature.

27. We are, therefore, of the opinion that the impugned levy cannot be sustained being discriminatory in nature. It is struck down accordingly. Petitioner would, thus, be bound to pay tax at the rate at which entertainment tax has been levied in respect of Telugu films. The Writ Petition is allowed with costs. Counsel's fees assessed at Rs. 50,000/-.