

# MADHYA PRADESH HIGH COURT

Harris Wilson

Vs.

State

Misc. Petn. No. 567 of 1981  
(G.G. Sohani and K.N. Shikla, JJ.)

23.02.1982

## JUDGMENT

**Sohani, J.**

1. The order in this petition shall also govern the disposal of Miscellaneous Petitions Nos.570, 578, 579, 580, 581, 582, 583 and 588 all of 1981, as common questions of law and facts arise in these petitions.
2. All these petitions under Article 226 of the Constitution of India are directed against the notices issued by the District Excise Officer demanding payment of entertainment duty under the provisions of the Madhya Pradesh Entertainments Duty and Advertisement Tax Act.1936 (hereinafter referred to as "the Act").
3. The petitioners carry on business of running a Video Games Parlour. In the said parlour, machines have been installed, which have to be operated for playing games of various types. Persons are allowed free entry to the games parlour and a person desirous of playing any game puts a coin in the slot, whereby a knob is released. Thereafter, to play a game and score points to entitle one to get a replay without further charges, the player has to operate the given mechanism, in a given time with such skill as would enable him to score a point by achieving the target. It is admitted that in this process, the player along and not the others who may be present in the parlour watching the player play, get thrilled. It is further admitted that no fees are charged for entry into the parlour for the purpose of watching people playing the games. In the circumstances, the petitioners contend that they are not liable to pay any entertainment duty under the provisions of the Act. They have, therefore, filed these petitions for quashing notices issued by respondent No.2 requiring them to pay the

entertainment duty.

4. To appreciate the contentions raised on behalf of the parties, it would be useful to refer to the material provisions of the Act. Sub-Clause (a) of Section 2 provides that admission to an entertainment includes admission to any place in which the entertainment is held. Section 2 (b) defines 'entertainment' as follows

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" "Entertainment" includes any exhibition, performance, amusement, game or sport to which persons are admitted for payment."

Then Section 2(d) defines 'payment for admission' as follows :-

" "Payment for admission" includes any payment made by a person, who, having been admitted to one part or a place of entertainment, is subsequently admitted to another part thereof for admission to which a payment involving duty or more duty is required and any payment for seats or other accommodation in a place of entertainment." Section 3 is a charging section. It provides that every proprietor of an entertainment shall, in respect of every payment for admission to the entertainment, pay to the State Government a duty at the rate specified in that behalf.

5. The question for consideration, therefore, is whether coins inserted in the slot, to enable persons to play the games, amount to payment for admission to any performance, amusement, game or sport or any other entertainment. That brings us to the question as to what is meant by the word 'entertainment'.

6. Now the definition of the word 'entertainment' in the Act is an inclusive one. The power to tax entertainments is derived by State Legislature from entry No.62 in List II of the Seventh Schedule to the Constitution. The Bombay High Court had occasion to consider the scope of that entry in *State of Bombay v. R.M.D. Chamarbaugwalia* <sup>1</sup>Though this decision was reversed by the Supreme Court in *State of Bombay v. R.M.D. Chamarbaugwalia*, <sup>2</sup> on the question as to whether the impugned law dealt with trade, commerce or business, the view expressed in AIR 1956 Bombay 1 (supra) with regard to the scope of the expression 'entertainment or amusement' in entry 62 has not been overruled. While dealing with the question as to whether tax on entry

fees collected for the crossword competition amounted to tax on entertainments or amusements, Chagla, C.J. observed as follows (at p.11):-

"The entertainment and amusement contemplated by entry 33 of List II with regard to legislation and entry 62 of List II with regard to taxes is not the subjective entertainment or amusement which a person may receive by solving a crossword puzzle or by indulging in any other mental or intellectual pleasure. The entertainment or amusement contemplated is something objective outside the person amused or entertained, and with regard to the tax on entertainment and amusement, the tax also is on the spectator who witnesses some amusement or entertainment."

We respectfully agree with the aforesaid observations. In this connection, we may also usefully refer to the following observations of a Division Bench of the Rajasthan High Court in His Highness The Maharaja of *Jaipur Museum Trust v. State of Rajasthan* <sup>3</sup>

"In the light of the principles enunciated in the cases and the meanings assigned to the word "entertainment" in the various books referred to above, and having regard to the preamble of the Act, we have no hesitation in coming to the conclusion that to bring an exhibition into the definition of "entertainment" a continuous process of performance may not be necessary but it is essential that the exhibition should be displayed with a view to provide amusement or gratification of any kind to the visitors and the fact that some persons might derive subjective gratification from exhibition, though not arranged for that purpose, is not relevant. The learned single Judge conveyed the same idea when he made the observations that the exhibition of articles can come within the definition of "entertainment" only when they are displayed with a view to provide amusement or gratification of any kind to the visitors who go and see that display and that they do proper amusement to them." On behalf of the State, learned Advocate General contended that the charging section, i.e. Section 3 of the Act, made it clear that the liability to pay tax was that of the proprietor of entertainment and reliance was placed on the decision in *Bhola Prasad Singh v. State of Bihar*, <sup>4</sup> That decision, however, is not relevant for the purpose of deciding the question arising in this petition which is whether what is offered by the petitioners is or is not entertainment. Now a visitor to be entertained must be provided with something which he sees or hears and is

thereby likely to be amused, though it may be that occasionally he may find that what is offered to him is boring, but the likelihood of amusement must be there on seeing or hearing something. If for deriving entertainment, a visitor has to perform something then what he sees or hears as a result of his performance is not entertainment provided by the petitioners. It is true that in the course of performance, a performer may also feel entertained but that is not what is contemplated by the charging section. To bring an activity of the proprietor within the net of the charging section, that activity by itself, without anything more, should be likely to amuse or entertain a person.

7. In the instant case, it is admitted that a visitor to the video games parlour does not, on entering into the parlour, see or hear anything which entertains him. It is also admitted that by merely inserting a coin in the slot, a person does not derive any amusement or thrill. It is only when that person operates the mechanism with such skill as he has, within a given time, in order to succeed in scoring a point, he is thrilled, and is in that process entertained. Therefore, what entertains a person in the video games parlour is his own performance and not the exhibition, performance, amusement, game or any sport offered by the petitioners. The payment made by a person to another to provide him with tools for deriving pleasure from his own performance with the help of the tools cannot be held to be payment to that another for 'admission to entertainment' as contemplated by the Act. In our opinion, therefore, it cannot be held that the petitioners receive 'payment for admission to entertainment', when they collect amounts inserted by the persons in the slot. No duty is payable by the petitioners under Section 3 of the Act in respect of the payments so received. The notices of demand issued by the respondents are, therefore, quashed.

8. For all these reasons, the notices of demand issued by respondent No.2 are quashed. In the circumstances of the case, parties shall bear their own costs of the petition. The amount of security, if any, shall be refunded to the petitioners.

Order accordingly.

Cases Referred.

1. AIR 1956 Bom 1
2. AIR 1957 SC 699

3. (1972 Tax LR 2428) (at p.2432)

4. (1974 Tax LR 330) (Pat)