

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30-01-2002

CORAM :

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

W.P. No. 8730 of 2001 and W.P. No. 8591 to 8598 of 2001 and W.M.P. Nos. 12218 to 12228 of 2001

1. M/s. M.C. Theater
Thatchur Road, Arani-632 301
Thiruvannamalai District
rep. by its Proprietrix
M.A. Kamala

2. M/s. Sri Gayathri Theater
3-G, Karthikeyan Road,
Arani 632 301
Thiruvannamalai District
rep. by its Proprietrix
R. Shyamala

3. M/s. Rajeswari Theater
Vanthavasi Road
Arani 632 301
Thiruvannamalai District
rep. by its Proprietor
A.G. Ramakrishnan

4. M/s. Shanthi Theater
236, Market Road
Arani 632 301
Thiruvannamalai District
rep. by its Partner
S. Jagadeesan

5. M/s. Sri Karthikeyan Theater
Arani 632 301
Thiruvannamalai District
rep. by its Proprietor
A.S. Shanmugam

6. M/s. Krishna Theater
Valapanthal Road
Arani 632 301
Thiruvannamalai District
rep. by its proprietor
P.T. Subramani

: 2 :

7. M/s. National Theater
21, Vaithyaraja Street
Arani 632 301
Thiruvannamalai
rep. by its Proprietor
R. Ranganathan

8. M/s. Sri Lakshmi Talkies
Market Road
Arani 632 301
Thiruvannamalai District
rep. by its Proprietrix
G. Thilagavathi Ammal ... petitioners in
WP No. 8730/2001

M/s. M.C. Theater
Thatchur Road, Arani-632 301
Thiruvannamalai District ... Petitioner in
rep. by its Proprietrix WP No. 8591/2001
M.A. Kamala

M/s. Sri Gayathri Theater
3-G, Karthikeyan Road,
Arani 632 301
Thiruvannamalai District ... Petitioner in
rep. by its Proprietrix WP No.8592/2001
R. Shyamala

M/s. Rajeswari Theater
Vanthavasi Road
Arani 632 301
Thiruvannamalai District ... Petitioner in
rep. by its Proprietor WP No.8598/2001
A.G. Ramakrishnan

M/s. Shanthi Theater
236, Market Road
Arani 632 301
Thiruvannamalai District ... Petitioner in
rep. by its Partner WP No.8596/2001
S. Jagadeesan

M/s. Sri Karthikeyan Theater
Arani 632 301
Thiruvannamalai District ... Petitioner in
rep. by its Proprietor WP No.8595/2001
A.S. Shanmugam

: 3 :

M/s. Krishna Theater
Valapanthal Road
Arani 632 301
Thiruvannamalai District ... Petitioner in
rep. by its proprietor WP No.8593/2001
P.T. Subramani

M/s. National Theater
21, Vaithyaraja Street
Arani 632 301
Thiruvannamalai
rep. by its Proprietor ... Petitioner in
R. Ranganathan WP No.8597/2001

M/s. Sri Lakshmi Talkies
Market Road
Arani 632 301
Thiruvannamalai District ... Petitioner in
rep. by its Proprietrix WP No.8594/2001
G. Thilagavathi Ammal
Versus

1. State Government of Tamilnadu
rep. by its Secretary to
Government, Commercial Taxes
& Religious Endowment Dept.,
Fort St.George, Chennai-9

2. The Deputy Commercial Tax
Officer, Arani ... Respondents in all
Thiruvannamalai District the WPs

Petitions under Article 226 of the Constitution of India praying for a
Writ of Declaration and for a Writ of Certiorari as stated therein.

: COMMON ORDER

Writ Petition No. 8730 of 2001 has been filed seeking for a Writ of
Declaration to declare that in the absence of an amendment being made to the
schedule by the State Government exercising its powers conferred under
Sec.16-A of the Tamil Nadu Entertainment Tax Act, 1939 there cannot be any
variation in the rate of tax prescribed for the theaters categorised in each
part of the schedules to the Tamil Nadu Entertainment Tax Act 1959 so far as
the petitioners are concerned.

The Writ petitioners in the above Writ Petition No. 8730 of 2001 have
filed separate writ petitions namely W.P. Nos. 8591, 8592, 8598, 85 96,

8595, 8593, 8597 and 8594 of 2001 respectively to issue a writ of certiorari to call for the records of the 2nd respondent in his proceedings directing the petitioners to pay the differential tax as Arani Municipality, where their theaters are located was upgraded from II grade Municipality to I Grade Municipality with effect from 22-05-19 98 and quash the same.

2. For the sake of convenience, all the petitioners in these writ petitions shall hereinafter be referred to as Theaters and the 1st respondent namely the Secretary to Government, Commercial Tax and Religious endowments department shall hereinafter be referred to as 1st respondent and the Deputy Commercial Tax Officer, Arani at Thiruvannamalai shall hereinafter be referred to as 2nd respondent.

3. All the theaters in these writ petitions are governed by Tamil Nadu Cinema Regulations Act 1955 and Tamil Nadu Cinema Regulations Rules 1957. The payment of Entertainment Tax is imposed on the theaters is governed by Tamil Nadu Entertainment Tax Act, 1939. The Theaters comes under the jurisdiction of Arani Municipality, which is mentioned in Part "C" of the schedule I to Entertainment Tax Act as a town of grade II Municipality. The Theaters are paying entertainment tax under Sections 5A and 5B of the Entertainment Tax Act. The theaters had opted to pay compound tax under Section 5B of the Entertainment Tax Act and the respondents have permitted them to pay tax under Section 5B which is commonly known as compounding tax. Necessary certificates in Form IV B of Tamil Nadu Entertainment Tax Act were issued by the 2nd respondent.

4. The Town of Arani, which was originally a secondary grade Municipality was upgraded as Grade I Municipality in 1998 under the Tamil Nadu District Municipalities Act. The respondents have failed to make necessary corresponding amendments in the Tamil Nadu Entertainment Tax Act deleting it from Part C of Schedule I and incorporated it in Part B. While so, the 2nd respondent called upon the Theaters to pay differential tax for the assessment years 1998-1999, 1999-2000 and 20 00-2001 on the basis that Arani Municipality was upgraded as Grade I Municipality.

5. The respondents have filed a common counter in all these writ petitions inclusive of W.P. No. 8730 of 2001. The learned counsel for the respondents argued that the Accountant General, Chennai has called for a clarification vide his letter dated 30-03-2001 from the respondents pointing out the loss of revenue under the Tamil Nadu Entertainment Tax Act for non-implementation of the G.O.Ms.No.85 dated 22-05-1998 thereby the Arnai Town was upgrade as Grade I Municipality. The notices were issued to the Theaters/Petitioners herein requesting them to pay the additional demand calculated as per the revised rate of tax under Section 5B of the Tamil Nadu Entertainment Tax Act applicable for Grade I Municipality with effect from 22-05-1998 as mentioned below:-

Name of the Theater Ref.No.& Date Amount Date of
of Tax Service of
Notice

1. M/s. M.C. Theater PFNo.1/89-90
dt.21-3-2001 127720 28-03-2001
2. Gayathri Theater PFNo.1/95-96
dt.27-2-2001 74947 03-03-2001
3. Sri Krishna Theater PFNo.1/88-99
dt.9-4-2001 102812 12-04-2001
4. Sri Lakshmi Theater PF No.3/86-87
dt.19-3-2001 139924 29-03-2001
5. Sri Karthikeyan PF No.1/96-97 Theater
dt.3-4-2001 38379 04-04-2001
6. Shanthi Theater PF No.4/87-88
dt.09-03-2001 139632 14-03-2001
7. National Theater PFNo.2/55-56
dt.27-03-2001 87125 07-04-2001
8. Rajeswari Theater PFNo.1/86-87
dt.2-4-2001 115977 02-04-2001

6. It is an admitted fact that after upgradation necessary corresponding amendment deleting Arani Municipality from Part "C" of Schedule I and incorporating the said Municipality in Part "B" was not carried out by the respondents. It is the case of the theaters/ Petitioners herein that without effecting such corresponding amendment, by exercising the powers conferred under Section 16 A of the Tamil Nadu Entertainment Tax Act, the respondents have no jurisdiction to pass the impugned order demanding higher tax on the basis of Grade I Municipality.

7. It is the case of the respondents that the failure to carry out corresponding amendment in the Entertainment Tax Act is only an omission which cannot be taken advantage of by the Theaters. It is further alleged by the respondents that the State Government is empowered to make the amendment with retrospective effect enabling the State to Collect tax from the theatres. Section 16 A (1) of the Tamil Nadu Entertainment Tax Act enables the State Government, by issuing notification, having due regard to the population including floating population, annual income and such other matters as may be prescribed amend prospectively or retrospectively any of the schedules and therefore no harm will be caused to the petitioners/Theaters in not deleting the Arani Town from Part C and incorporating the same in Part B.

8. It is true that the State Government is empowered to vary the revised tax. In the present case, the corresponding amendment required to be incorporated. So long as the Arani Town finds place in Part C of the Schedule I of the Entertainment Tax Act, the respondents have no authority to collect tax under Section 5B of the Entertainment Tax Act applicable to Grade I

Municipality. Article 265 prohibits levy and collection of tax except by authority of law, which means only a valid law and as such realisation of tax or money without authority of law is bad.

9. The power of the State Government to levy and collect tax is governed by entry 62 of the second list to the 7th schedule of Constitution of India. The powers to regulate and govern the local bodies is vested under Entry 5 list II to the 7 th Schedule to the constitution of India. The amendment made under the District Municipalities Act cannot automatically enable the respondents to demand entertainment tax on the basis of upgradation of Arani Municipality as Grade I Municipality until the corresponding amendment is made in exercise of Powers conferred under Section 16 A of the Tamil Nadu Entertainment Tax Act.

10. Article 265 of the Constitution prohibits levy and collection of tax excepts by authority of law, which means only a valid law. The demand made by the respondents are without any authority of law as such the impugned order is bad.

11. The petitionrs allege that no notice under section 26 A (1) of the Entertainment Tax Act was served on the petitioners/Theaters herein before calling upon them to pay the differential tax. It is seen from the records placed before me that without complying with the statutory requirements, the impugned notice has been issued by the respondents, hence they are not valid in the eye of law.

12. It is admitted by the respondents that the Theaters have not collected any revised tax consequent to the G.O.Ms.No.85 dated 22-05-199 8 since it was not possible for them as Arani Town lies under Part C of Schedule I. On this ground also, the Theaters are not liable to pay the revised tax applicable to Grade I Municipality. As rightly pointed out by the learned counsel for the Theaters, no notice was issued by the respondents before making the impugned demand of revised tax.

13. For the said reasons, the impugned notice is liable to be quashed and accordingly quashed. With the result, all the writ petitions are allowed. However, in the circumstances of the case, there shall be no order as to costs. Connected WMP's are also closed.

30-01-2002 mp/rsh

Index : Yes / No.

s/d Asst. Registrar

//True Copy//

S/d Sub-asst. Registrar To

1. The Secretary to Government Commercial Taxes & Religious Endowment
Department, Government of Tamil Nadu Fort St.George, Chennai-9

2. The Deputy Commercial Tax Officer, Arani
Thiruvannamalai District
A. KULASEKARAN, J

W.P. Nos. 8730 and 8591 to 8598 of 2001

30-01-2002 □