

THE ENTERTAINMENT TAX OFFICER

v.

AMBAE PICTURE PALACE

OCTOBER 28, 1993

[KULDIP SINGH AND YOGESHWAR DAYAL, JJ.]

*Andhra Pradesh Entertainments Tax Act, 1939 : Tax on the basis of gross collection capacity per show—Repeated Amendments—Retrospectivity given to the Amending Act 16 of 1985—Explanation from the State providing for retrospectivity—Not required—Competence to enact laws prospectively as also retrospectively.*

The Andhra Pradesh Entertainments Tax Act, 1939 provided for levy of tax at the fixed rate on the basis of percentage of payment made by a person for admission to any entertainment. By an Ordinance in 1983 certain amendments were brought about. This Amendment Ordinance amended Section 4 and increased the rate of tax on the admission rate and Section 5 was substituted, which categorised theaters and the area in which the theater was situated. By another Ordinance issued on 21st March, 1984, to be effective from 23rd March, 1984, the measure of tax payable under Section 4 was altered and the proprietors of theaters became liable to pay tax at the gross collection capacity per show at certain percentage. The percentage of taxation again differed depending upon the location and type of the theater. This Ordinance was replaced by Act No. 24 of 1984 and its validity was upheld by this Court.

Consequent upon change of Government in the State, the new Government promulgated an Ordinance with effect from 7th September, 1984, restoring the position as it stood prior to 23rd March, 1984. However, on the reinstatement of the old Government, an Ordinance was issued on 25th October, 1984 with retrospective effect from 7th September, 1984, reintroducing payment of entertainment tax on the basis of gross collection capacity of the show. This Ordinance was replaced by Act No. 16 of 1985. The retrospectivity given to it was challenged before the High Court by way of Writ Petitions. The High Court upheld the challenge on the ground that no explanation had been given in the Act providing for retrospectivity of the Amendment Act.

A Being aggrieved by the Judgment of the High Court, the State preferred an appeal before this Court.

Allowing the appeal, this Court

B HELD : 1. If the Parliament or the State Legislatures have competence to legislate, they can do so prospectively as well as retrospectively and taxation laws are no exception to this power. [457-E]

C *The Union of India v. Madan Gopal Kabra*, [1954] S.C.R. 541; *M/s Krishnamurthi & Co. etc. v. State Madras and Anr.*, [1973] 2 S.C.R. 54 and *Rai Ram Krishna & Ors. v. The State of Bihar*, [1964] 1 S.C.R. 897, relied on.

D 2. Though it is not for the State to justify or explain the necessity for the amendment even in relation to retrospectivity of the Act but obviously, on the face of it, there appeared to be a change of policy by a succeeding Government on the policy pursued by its predecessor. Surely, the successor Government can have different rules from their predecessor in including the matters relating to taxation or mode of taxation or basis of taxation or objects of taxation etc. No explanation was required from the state for the Amending Act having retrospective effect. [459-C-D]

E *D. Cawasji and Company v. State of Mysore and Ors.*, 58 S.T.C. 1 (S.C.), distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 90 of 1987.

F From the Judgment and Order dated 3.4.86 of the Andhra Pradesh High Court in W.P. No. 15363/84.

C. Sitaramaiah, T.V.S.N. Chari, Nikhil Nayyar, Ms. Promila and Ms. Bharati Reddy for the Appellant.

G The Judgment of the Court was delivered by

H YOGESHWAR DAYAL, J. This is an appeal on behalf of the Entertainment Tax Officer-I, Khammam and the State of Andhra Pradesh against the judgment and decree of the High Court of Andhra Pradesh dated 3rd April, 1986 whereby a Division Bench of the High Court struck down Section 1 of Act No. 16 of 1985 (the Andhra Pradesh Entertainments

Tax (Amendment) Act, 1985) to the extent of its applicability retrospectively between 7th September, 1984 to 24th October, 1984. A

To appreciate the point it is necessary to deal with the history of the Entertainments Tax Acts in Andhra Pradesh.

The Andhra Pradesh Entertainments Tax Act, 1939 (Act No. X of 1939) provided for levy of tax at the fixed rate on the basis of percentage of payment made by a person for admission to any entertainment. However, in 1976 by Act No. 58 of 1976, Section 4-C was introduced under which tax was levied on entertainment show on the basis of certain percentage of the gross collection capacity of the show within the jurisdiction of any local authority whose population does not exceed 25,000. Under Section 5, as introduced by that Act, it was open to a proprietor of the cinema to enter into an agreement with the concerned authority to compound the tax payable under Section 4-C for a fixed sum in accordance with the formula prescribed under Section 5. This continued till December 31, 1983. B C D

By the Andhra Pradesh Entertainments Tax (Amendment) Ordinance, 1983 certain amendments were brought about. This Amendment Ordinance amended Section 4 and increased the rate of tax on the admission rate and Section 5 was substituted. Section 5, as amended, provided that the proprietor may, at his option and subject to such conditions as may be prescribed, pay the amount of the tax to the State Government every week as per the corresponding entry in column (3) thereof. The table given under Section 5 categorised theaters and the area in which the theater is situated. E

By the Andhra Pradesh Ordinance No. 9 of 1984 issued on 21st March, 1984 with effect from 23rd March, 1984 the measure of tax payable under Section 4 was altered and the proprietor became liable to pay tax at the gross collection capacity per show at certain percentage. The percentage of taxation again differed depending upon the location and type of the theater. A Bill which became later the Amendment Act No. 24 of 1984 was passed by the Legislative Assembly but not by the Legislative Council. In this situation Ordinance No. 14 of 1984 was promulgated which was issued on 27th April, 1984 bringing into force Sections 3, 6 and 13 with effect from 23rd March, 1984. Amendment Act No. 24 of 1984 received the assent of the Governor on 20th May, 1984. Section 2 of this Amendment Act states F G H

A "sections 3, 6, and 13 shall be deemed to have come into force on the 23rd March, 1984 and the remaining provisions except section 16 shall be deemed to have come into force on the 1st January, 1984". Section 3 of this Amendment Act substituted Section 4 in the same terms as in the Ordinance 9 of 1984.

B It appears there was a change of Government in Andhra Pradesh and the new Government promulgated Ordinance No. 26 of 1984 with effect from 7th September, 1984. By this Ordinance the position as it was prior to 23rd March, 1984 was restored i.e. the entertainment tax was payable on the actual payment received for admission to the entertainment and substituted Section 4 to this effect.

C It appears there was again a change of Government and the old Government which had gone out of power, had come to power. On 25th October, 1984 Ordinance No. 31 of 1984 was issued, with retrospective effect from 7th September, 1984, reintroducing payment of entertainment tax on the basis of gross collection capacity of the show. This Ordinance was replaced by Act No. 16 of 1985 which became effective from 7th September, 1984. It may be mentioned that Ordinance No. 26 of 1984 remained only as an Ordinance and no Act was passed in terms thereof.

D Sub-section (2) of Section 1 of the Andhra Pradesh Ordinance No. 31 of 1984 *inter alia* provided that it shall be deemed to have come into force on 7th September, 1984 and repealed Andhra Pradesh Ordinance No. 26 of 1984. This Ordinance was replaced by Act No. 16 of 1985 which became effective, like Ordinance No. 26 of 1984, with effect from 7th September, 1984.

E A batch of writ petitions were filed questioning the Andhra Pradesh Entertainments Tax Act as amended by Act No. 24 of 1984 i.e. the amendment introduced for levying the tax on gross collection capacity in the High Court of Andhra Pradesh. The High Court upheld this Act. On appeal this Court affirmed the said decision which is reported as *Venkateshwara Theatre v. State of Andhra Pradesh and others*, [1993] 3 SCC 677.

F It appears the provisions of Section 1 sub-Section (2) giving retrospective effect as contained in the Amendment Act No. 24 of 1984 was challenged in the batch of writ petitions again. The High Court of

Andhra Pradesh upheld the contention of the petitioners therein and stuck down the retrospectivity of the Amendment Act No. 16 of 1985 on the ground that no explanation had been given in the Act providing for retrospectivity of the Amendment Act. As stated above it is against this decision of the High Court that the present appeal is directed.

The High Court dealt with the reasonableness of the retrospective provision and stated that the Government did not offer any explanation for retrospectivity of the tax law and held that to the extent it directs retrospectivity between 7th September, 1984 to 24th October, 1984, it is arbitrary, unreasonable and ultra vires the Constitution. The High Court purported to have followed the ratio of the decision in the case of *D. Cawasji and Company v. State of Mysore and others*, 58 STC 1 (S.C.). So far as the Constitutional validity of the Amending Act is concerned, as we have noticed earlier, it has already been upheld by a Bench of this Court in the case of *Venkateshwara Theatre* (supra).

Unfortunately nobody appeared during the hearing on behalf of the respondent before us and, therefore, we did not have advantage of any submission on its behalf.

If the Parliament or the State Legislature have competence to legislate, they can do so prospectively as well as retrospectively and taxation laws are no exception to this power. (Reference in this connection may be made to the decision of this Court in *The Union of India v. Madan Gopal Kabra*, [1954] S.C.R. 541 at pages 554-555). Again in *M/s. Krishnamurthi & Co. etc. v. State of Madras and another*, [1973] 2 S.C.R. 54, this Court held that the legislative power conferred on the appropriate legislatures to enact laws in respect of topic covered by the several entries in the three lists can be exercised both prospectively and retrospectively.

Again in the case of *Rai Ramkrishna and Others v. The State of Bihar*, [1964] 1 S.C.R. 897, a Constitutional Bench of this Court observed thus :

"The power of taxing people and their property is an essential attribute of Government and the Government can legitimately exercise the said power by reference to the objects to which it is applicable to the utmost extent to which Government thinks it expedient to do so. The objects to be taxed so long as they happen to be within the legislative competence of the legislature, can be

A       taxed by the legislature according to the exigencies of its needs, because there can be no doubt that the State is entitled to raise revenue by taxation. The quantum of tax levied by the taxing statute, the conditions subject to which it is levied, the manner in which it is sought to be recovered, are all matters within the competence of the legislature."

B

Again the Bench observed :

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"Where the legislature can make a valid law, it can provide not only for the prospective operation of the material provisions of the said law, but it can also provide for the retrospective operation of the said provisions."

We may mention that the statement of objects and reasons of the Amending Act No. 16 of 1985 states as follows :

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#### "STATEMENT OF OBJECTS AND REASONS

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The Andhra Pradesh Entertainments Tax (Amendment) Act, 1984 (Act No. 24 of 1984) brought about the change in the system of levy of Entertainments Tax in the State, whereby the proprietors of entertainments are liable to pay tax on the gross collection capacity on every show in respect of entertainments held in the theaters located in the local areas specified in the table under Section 4 calculated at the rates specified therein with a provision for option under Section 5 of the Act.

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In the month of September, 1984, the then Government decided to levy entertainments tax on payment for admission to entertainments in the place of levy of entertainments tax on the gross collection capacity on every show in respect of entertainments held in the theaters. Accordingly, the Andhra Pradesh Entertainments Tax (Third Amendment) Ordinance, 1984 (Ordinance 26 of 1984)

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was promulgated by the Governor on the 4th September, 1984.

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The Government subsequently on a review of the decisions taken by the then Government have decided to restore the system of collection of tax on the basis of gross collection capacity on every show and to revert back to the position as obtained prior to the promulgation of Ordinance 26 of 1984 and to repeal the

aforesaid Ordinance with retrospective effect from the 7th September, 1984. A

As the State Legislature was not then in session and as it was considered necessary to give effect to the above decision immediately, the Andhra Pradesh Entertainments Tax (Fourth Amendment) Ordinance, 1984 (Ordinance 31 of 1984) was promulgated by the Governor on the 24th October, 1984." B

Though it is not for the State to justify or explain the necessity for the amendment even in relation to retrospectivity of the Act but obviously, on the face of it, there appeared to be a change of policy by a succeeding Government on the policy pursued by its predecessor. Surely the successor Government can have different rules from their predecessor including the matters relating to taxation or mode of taxation or basis of taxation or objects of taxation etc. No. explanation was required from the State for the Amending Act having retrospectively effect. C D

The learned Judges of the High Court sought to apply the principles of *Cawasji's* case (supra). It appears to us that the principles laid down in that case were not applicable to the fact of the present case. In *Cawasji's* case, the Government started collecting sales tax on the sale price of Arrack together with excise duty and cesses payable thereon. So computed the sales tax came to 24 paise. This was challenged by the Arrack contractors. The Mysore High Court held that the Government could not collect sales tax on excise duty since it was not a part of the selling price. During 1968-69 the State Government collected the sales tax computing the sales tax at 6 1/2% of the actual sale price of Arrack without including excise duty or cess. It appears that during the pendency of the appeal in this Court, the privilege of vending liquor in the year 1968-69 was sold without any variation in the prices of Arrack fixed by the Government during previous year at 55 paise per litre. Though the appellants obtained order of stay from April, 1986 various other contractors paid sales tax on the sale price of Arrack together with excise duty and cess. The Government withdrew the appeal from this Court. In view of the finality of the judgment of the Mysore High Court the Government became liable to refund the excess amount of sales tax collected from the licencees and the contractors. With the object of avoiding liability of refund of the excess amount so collected, Ordinance No. 3 of 1969 was passed on 19th July, 1969 which E F G H

- A ultimately became an Act amending the Sales Tax Act. By virtue of this amendment the sales tax was increased from 6 1/2% to 45% and the Act stated that it became effective from 1st April, 1966. In the Objects and Reasons of this Act it was specifically mentioned "in order to get over the effects of the High Court decision and retain the money already recovered by the Government, it is proposed to enhance the rate of tax on Arrack to 45% with retrospective effect from 1st April, 1966." The validity of this Amendment Act was challenged as unreasonable and arbitrary. The Amendment Act did not seek to rectify or remove the defect or lacunae but was only brought about for the purpose of circumventing the judgement of the High Court with the object of avoiding liability to refund the amount which was illegally collected as sales tax from the appellants therein by raising the rate of tax from 6 1/2% to 45% retrospectively. This contention was accepted by the learned Judges of the Mysore High Court and they took the view that the levy retrospectively raising the tax was illegal as it was only to circumvent the judgment.

- D The facts of the present case are totally different. No judgment of any Court was sought to be circumvented.

- E For the aforesaid reasons the appeal is allowed and the judgment under appeal of the High Court is set aside. The provisions of sub-section (2) of Section 1 of Act No. 16 of 1985 are upheld. Since the respondent has not put in appearance, no order is passed in relation to costs.

V.M.

Appeal allowed.