A STATE OF U.P. AND ANR.

v.

KAMLA PALACE

DECEMBER 17, 1999

B [S.P. BHARUCHA, R.C. LAHOTI AND N. SANTOSH HEGDE, JJ.]

Uttar Pradesh Entertainment and Betting Tax Act, 1979/Constitution of India, 1950—Section 3A/Article 14—Levy of entertainment tax on payment for admission to entertainment including cinema—Grant-in-aid scheme C *extended to cinema houses also by a government Order subject to a ceiling on the maximum admission fee—Act amended in 1989, introduced realisation of extra charge on account of air-cooling/conditioning—The Act further amended twice—Provided for realisation of extra charge by cinema owners for maintenance also—Proviso to Section 3A excluded cinema houses* D *receiving grant-in-aid from realising extra charge for maintenance—Challenged before High Court in a writ petition—Held to be* **ultra vires** *by a Division Bench—Another Division Bench hearing similar petitions dissented with the said decision—Full Bench held it not to be* **ultra vires**—*On appeal—Held, Article 14 does not prohibit reasonable classification by Legislature for attaining specific ends—Economic and Tax laws enjoy a greater latitude* E *than laws relating to civil rights—The two classes of cinema owners existed well before the amendment—Cinema owners receiving grant-in-aid formed a class by themselves different from those not receiving the grant—Object sought was boosting of entertainment facilities—The classification had nexus with the object sought to be achieved.*

F **The State of U.P. enacted the Uttar Pradesh Entertainments and Betting Tax Act, 1979 introducing levy of entertainment tax on all payment for admission to any entertainment including cinematographic exhibitions. The State of U.P., by a Government Order dated 17-09-1983. extended the scheme of grant-in-aid for permanent cinema houses constructed within a specified** G **period, subject to certain conditions. One of the main conditions was that the grant-in-aid was admissible only to such cinema houses which had fixed their maximum entrance rates at not more than Rs. 2.50 including taxes. By the U.P. Cinemas and Taxation Laws Amendment Act, 1989, Section 3A was introduced in the Act providing for realisation of certain extra charge on the admission fee on account of air-cooling/conditioning of the cinema hall. By**

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the 1992 amendment, realisation of an extra charge on account of maintenance was also permitted which was raised substantially by the 1995 amendment. Proviso to Section 3A of the Act, however, precluded the proprietors receiving grant-in-aid/incentives from the Government from realising the said extra charge during the period the aid is received. Classification of cinema houses into those receiving aid and those not receiving aid for the purposes of realising maintenance charges was challenged by the respondent and others before the High Court as being violative of Article 14 of the Constitution of India. A Division Bench of the High Court, vide judgment dated 10-07-1995, held the said proviso to be ultra vires the Constitution on the ground that the said classification had no nexus with the purpose sought to be achieved. However, another set of similar writ petitions came before another Division Bench of the High Court which dissented with the view of the earlier Division Bench in its judgment. On this the matter was referred to the Full Bench which also held the proviso as not violative of Article 14 of the Constitution. After the full Bench decision, the appellant moved an application for review of the judgment dated 10-07-1995 which was dismissed. Hence the present appeal.

The respondent contended that irrespective of the fact of receiving grant-in-aid, the cinema houses required maintenance equally and therefore, the classification was unreasonable and also did not in any way achieve the object of boosting the maintenance of cinema houses. The appellant contended that the classification was well-defined as the incentive scheme was optional and temporary for the purpose of encouraging permanent cinema houses in particular localities identifiable by reference to population to statistics and also it restricted the rate of admission fee as prescribed by the Government. According to the appellant such cinema houses were clearly distinguishable from those not receiving aid.

Disposing the appeals, this Court

HELD: 1.1. 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. The incentive was available on a staggered scale depending on the size of population catered

A to by the cinemas situated in the rural areas. The incentive was by way of grant-in-aid equivalent to 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 formed a class B by themselves different and distinct from those cinema owners who were not receiving any grant-in-aid under an incentive schemes and/or were free to for admission without any restriction as to upper limit i.e. their fee for admission to entertainment could be more than Rs. 2.50 or Rs. 5. Such classification is clear, well-defined and real. The object sought to be achieved C 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 a recovery of certain amount by way of charges for maintenance to such another 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. D [460-D-H; 461-A]

1.2. The incentive schemes realising the grant-in-aid were optional. There was no compulsion on the cinema owners to opt for the 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 E 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 by opting out from the incentive scheme and availing the benefit of recovering charges for maintenance conferred by the 1992 amendment and they were always and at any time free to do so. [461-C-E]

F *Kamla Palace* v. *State of U.P.*, AIR (1996) All 375 affirmed.

1.3. Article 14 of the Constitution of India does not prohibit reasonable classification of persons, object and transactions by the Legislature for the purpose of attaining specific ends. To satisfy the test of permissible G classification, it must not be "arbitrary, artificial or evasive" but must be raised on some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the Legislature. 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 H inequities inasmuch as such legislation are designed to take care of complex

situations and complex problems which do not admit of solutions through any doctrinaire approach or straight-jacket formulas. [459-E-G] A

Re. Special Courts Bill, **[1979] 20 SCR 476 and** *R.K. Garg* **v.** *Union of India,* **[1981] 4 SCC 675, followed.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 662 of 1997. B

WITH

C.A. Nos. 663/97, 664/97, 2563/97, 2150-57/97, 2159/97, 2179-2204/97, 4643/97, 8718/97 and SLP (C) No. 11464/98.

From the Judgment and order dated 14.11.1996 at the High Court of C Allahabad in Review Application No. 21065 of 1996.

A.K. Goel, AAG., U.P., Kavin Gulati, N.P.S. Panwar, S.N. Bhat, Prasenjit Keswani, Joseph Pookkat and Prashant Kumar for Appellants.

Ranjit Kumar and Ms. Abha R. Sharma for the Respondents.

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In C.A. No. 2182/97 A.K. Ganguli, Shiva Pujan Singh, Ms. Niranjana Singh, Goodwill Indeever and Sarat Chandra.

The Judgment of the Court was delivered by

R.C. LAHOTI, J. This order shall govern the disposal of a bunch of appeals grouped into three and arising in the backdrop of events stated E hereinafter.

The Uttar Pradesh Entertainments and Betting Tax Act, 1979 (U.P. Act No. 28 of 1979) was enacted and came into force in the State of U.P. on August 16, 1981. It introduced the levy of the entertainment tax payable at a certain percentage on all payments for admission to any entertainment. F 'Entertainment' as defined in the interpretation clause includes cinematograph exhibitions amongst others. With a view to encouraging cinema construction the state of Uttar Pradesh extended a scheme of grant-in-aid for permanent cinema houses constructed within a specified period through a Government Order dated 17th September, 1983. Permanent cinema houses constructed G 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 year of construction in the areas/places having the population of more than 20,000 but less than 1,00,000. In the areas/places having population of less than 20,000 the amount of grant-in-aid was equivalent to 100%, 75%, 50% respectively for the first two years, H

A the third year and the fourth year of construction. There were a few conditions attaching with the entitlement to the benefit of the grant-in-aid. The conditions relevant for our purpose were: (1) that the grant-in-aid shall be admissible only to such cinema houses which fixed their maximum entrance rates inclusive of tax at not more than Rs. 2.50; (ii) that the District Magistrate shall permit the grant-in-aid after providing the licence in the performa enclosed with the B Government Order; and (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 21st July, 1986, and 18th July, 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 C of the years 1986 and 1989 the benefit was available to such permanent cinema houses as fixed admission rate at not exceeding Rs. 5.

The U.P. Cinemas and Taxation laws Amendment Act, 1989 (U.P. Act No.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 D of a centrally air-cooled or centrally airconditioned cinema to realise, subject to prior permission of the District Magistrate, an extra charge of 10 paisa and 25 paisa 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- E cooling or air-conditioning facility, as the case may be. The abovesaid Section 3A was further amended by Act No. 14 of 1992. Section 3A in its amended form along with the proviso appended to sub-section (1), which proviso is the bone of contention, is reproduced hereunder:-

F "[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, -

(a) an extra charge of [one rupee] which shall be utilised for G maintenance of the cinema premises;

(b) in case of a centrally air-cooled or centrally air-conditioned cinema a further extra charge of twenty five paisa 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 H the fifteenth day of October next following:

Provided that the proprietor of a cinema receiving grant-in-aid from the State Government under any incentive scheme shall not be entitled to realise extra charge under clause (a) during the period such grant-in-aid is received by him.] A

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The amount of extra charge permitted for maintenance of the cinema premises was 25 paisa as introduced by Act No. 14 of 1992. It was revised to 1 rupee by U.P. Act No. 3 of 1995 with effect from 10.10.1994.

The validity of the amendment was challenged by a number of cinema houses/cinema owners by filing several writ petitions. One such petition was C filed by Kamla Palace. The principal ground of challenge was that the proviso appended to sub-section (1) of Section 3A 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 to sub-section (1) of amended Section D 3A 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 Section 3A 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. E Inasmuch as all the cinema 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 be 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 foul of Article 14 of the Constitution. Civil Appeal No. 664/97 *State of U.P.* v. *Kamla Palace* F and 53 other appeals C.A. Nos. 2150-2157, 2159-2177 and 2179-2204/97 have been preferred against the Division Bench judgment dated 10.7.1995.

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 G came to be heard by another Division Bench of that High Court which formed an opinion doubting the correctness of the view taken in the 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 pleased to constitute a Full Bench to resolve the controversy. The Full Bench heard the matters in the writ petition filed by Natraj Chabigrah, H

A Sigra. By its judgment dated 22.3.1996 (reported as AIR 1996 Allahabad 375) the Full Bench overruled the Division Bench decision dated 10.7.1995 in Kamla Palace (supra). Civil Appeal No. 663/1997-Sushil *Bhasin* v. *State of U.P.* and C.A. Nos. 2563, 4643, 8718 of 1997 and SLP(C) No. 11464/1198 have been filed by different cinema houses/cinema owners against the Full Bench
B judgment.

Emboldened by the Full Bench decision dated 22.3.1996 the State of U.P. moved and application for review of the judgment dated 10.7.1995 in the case of Kamla Palace. The application for review was barred by time by 241 days. An application seeking condonation of delay under section 5 of the Limitation Act was also filed. The Division Bench which had decided the case of Kamla
C Palace heard the application for review as also the application under Section 5 of the Limitation Act. By the order dated 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. C.A. No. 662/1997 has been preferred by the State of
D U.P. putting in issue the order dated 14.11.1996.

We have heard the learned counsel for the parties in all the matters analogously. The issue 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
E dividing the cinema houses into two based on the criterion whether they receive or do not receive benefit of incentive scheme propounded by the State Government and whether such classification has no nexus with the object sought to be achieved.

It was submitted by the learned counsel for the cinema owners whether
F a cinema receives or does not receive grant-in-aid by way of relief in the amount of entertainment tax does not make any difference so far as the maintenance of 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 brings into existence two classes of cinemas by drawing an artificial dividing line. Both the types of cinemas need maintenance. The
G 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 houses. 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
H 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 houses located in particular localities indentifiable by reference to population statistics of the previous census. The benefit conferred by the incentive scheme is conditional upon the cinema limiting its admission rate inclusive of taxes to a maximum which was Rs. 2.50 initially, revised to Rs. 5 in the latter schemes. Such cinema houses are clearly distinguishable from those which do not take 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 at above Rs.5. The cinemas falling in the later 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.

We are of the opinion that the challenge laid to the Constitutional validity of the proviso abovesaid is without any 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 10.7.19975 was not a correct view of the law. The Division Bench decision dated 10.7.1995 was rightly overruled by the Full Bench by its decision dated 22.3.1996. We now proceed to examine validity of the rival contentions advanced before us.

Article 14 does not prohibit reasonable classification of persons, objects and transactions by the Legislature for the purpose 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 :-*Re : Special Court Bill,* [1979] 20 SCR 476, 7 -judges Bench; *R.K. Garg* v. *Union of India,* [1981] 4 SCC 675, 5 -judges Bench.] It was further held in R.K. Garg's case 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 legalisations are designed to take care of complex situations and complex problems which do not admit of solutions through any doctrinaire approach or straight-jacket formulas. Their Lordships quoted with approval the observations made by Frank Furter, J. In *Morey* v. *Doud,* (1957) 354 US 457—

"In the utilities, tax and economic regulations cases, there are good

A 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 uncertainly, 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."

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The Legislature gaining wisdom from historical facts, existing situations, matters of common knowledge and practical problems and guided by C considerations of policy must be given a free hand to devise classes to whom to tax or not to tax, to whom to exempt or not to exempt and to whom to give incentives and lay down the rates of taxation, benefits or concessions. In the field of taxation if the test of Article 14 is satisfied by generality of provisions the Court would not substitute judicial wisdom for the legislative wisdom.

D 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 E 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 raised before the High Court and also submitted by the learned Standing counsel for the State of U.P. before us, that the incentive was available on a staggered scale depending on the size of F population catered to by the cinemas situated in rural areas. The incentive was by way of grant-in-aid equivalent to 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 free for admission G beyond a ceiling i.e. Rs. 2.50, later on revised to Rs.5. Such cinema owners formed a class by themselves different and distinct from those 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 upper limit, i.e., their fee for admission to entertainment could be, more than Rs. 2.50 or Rs. 5. Such classification is clear, well-defined and real. The object sought to H 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 certain amount by way of charges for maintenance to such another 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 area would have secured double benefit-one by way of grant-in-aid and 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 benefit of an incentive scheme of the State Government. Moreover, it cannot be lost sight of that the incentive schemes releasing the grant-in-aid were optional. There was no compulsion on the cinema owners to opt for the incentive scheme and have 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 by opting out from the incentive scheme and availing the benefit of recovering charges for maintenance conferred by the 1992 amendment were always and at any time free to do so.

For the foregoing reasons we are of the opinion that the Division Bench was not right in passing the order dated 10.7.1995 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. 664/97 State *of U.P.* v. *Kamla Palace* and 53 other appeals, i.e., C.A. Nos. 2150-2157, 2159-2177 & 2179-2204/1997 are allowed. The judgment dated 17.7.1995 passed by the Division Bench allowing the writ petitions is set aside. C.A. No. 663/97-Sushil *Bhasin* v. *State of U.P.* & C.A. Nos. 2563, 4643, 8718/1997 and SLP(C) No. 11464/1998 are dismissed. The judgment of the Full Bench dated 22.3.1996 (reported as AIR 1996 Allahabad 375) is confirmed. C.A. No. 662/1997 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 of the appeals.

Before parting we would like to make it clear that some of the cinema

A 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, accounts/statements of such collections have been maintained and B also verified from time to time by the authorities concerned. All interim orders stand vacated. The consequences as provided by law in the matter of liability to pay entertainment tax and recovery thereof shall follow.

R.C.K. Appeals allowed/dismissed and petition dismissed.