Hukum Singh Vs State of U.P. and Others

Court: Allahabad High Court

Date of Decision: Aug. 22, 1997

Acts Referred: Constitution of India, 1950 â€" Article 19(1)
Uttar Pradesh Entertainments and Betting Tax Act, 1979 â€" Section 1

Citation: AIR 1998 All 120 : (1997) AWC 505

Hon'ble Judges: R.K. Gulati, J; Om Prakash, J

Bench: Division Bench

Advocate: G.C. Bhattacharya, for the Appellant; Standing Counsel, for the Respondent

Final Decision: Dismissed

Judgement

Om Prakash, J.
These three writ petitions are filed by petitioners who fall in different categories. Sri G.C. Bhattacharya, learned counsel

for the petitioners made common arguments and, therefore, it is convenient to dispose of the three writ petitions by a common order.

2. Writ Petition No. 672/96 is filed by the Secretary, Recreation Centre of National Thermal Power Corporation, Singrauli (briefly, the NTPC),

writ petition No. 637/96 is filed by three Cable T. V. Net work operators and the last writ petition being the writ petition No. 647/96 is filed by a

subscriber.

3. In all these writ petitions, the petitioners have, inter alia, sought quashing of assessment orders, made u/s 12 Sub-section (1) of the U.P.

Entertainment and betting Tax Act, 1979 (briefly, the Act) which are appealable under Sub-section (2) of Section 12 of the Act and of the

impugned G. O. dated 12-4-1989 notifying the rates of tax.

4. Since Sri G.C. Bhattacharya, learned counsel for the petitioners has made a new argument in respect of which pleadings have been raised only

in the first writ petition, we first take up the first writ petition and state the facts therefrom relating to the new argument. It is averred that the

Recreation Centre is being run as a welfare measure by the NTPC for its employees, who are working at Singrauli Super Thermal Power Station,

Shaktinagar, district Sonebhadra; that the Centre was established in 1981 of which employees of the singrauli Super Thermal Power Station are

members; membership fee at the inception was Rs. 4/- per month, but later that was increased to Rs. 8/- per month; that the Centre provides

several facilities, namely, library, newspaper, magazine, indoor games, swimming pool etc. to its members; in 1987, a dish antena for watching the

worldwide T. V. programmes was installed at the Centre from which the members of the Centre could watch Cable T. V. programmes through

T.V. in their homes free of charge; that the members of the Centre were subjected to payment of Rs. 8/- per month as membership fee and nothing

was charged for Cable T.V. programmes.

5. Before stating further pleadings of the case, it is worth pointing out that in similar circumstances, Hindalco Industries Ltd. (briefly, the Hindalco)

assailed its entertainment tax liability. The Hindalco runs a factory at Renukoot, district Sonebhadra and has a big residential complex for its

workers there. Like, the NTPC, the Hindalco also provided Cable T. V. Network programme facility to its employees. The Hindalco had given a

contract to Shyam Communication System, New Delhi to maintain the Cable T. V. Network. The Hindalco charged a nominal amount of Rs. 5/-

per month from its employees for maintenance of the Cable T. V. Network, though the actual expenditure incurred on the operation of the Cable

T. V. Network programme, was far more, which was borne by the Hindalco. The Hindalco disputed its assessability under the Act, which plea

was rejected by the District Magistrate, Sonebhadra, who eventually raised the demand of entertainment tax against the Hindalco. Aggrieved, the

Hindalco filed a writ petition No. 637/95 before this Court and then by a judgment dated 15-11-1995 (reported in Hindalco Industries Ltd. and

others Vs. State of Uttar Pradesh and others, , a Division Bench of this Court held (Paras 14 and 15) :--

14 .....If such facility/entertainment is provided and the viewers are charged for it, the liability to pay entertainment

tax is created. The quantum of amount which is paid by the viewer in lieu of entertainment given to them is not relevant. The name which has been

given to such an amount by the employer is also not relevant. Once any sum is realised from the viewers for entertainment, liability to pay tax is

created immediately.

15. The fact that the Hindalco is providing Cable Net work facilities to its employees as a welfare measure and not with profit motive, may be a

good ground for Hindalco to seek exemption for the payment of entertainment tax u/s 11(1) of the Act. For that purpose Hindalco is at liberty to

file an application before the State Government. But unless such an exemption is granted, Hindalco is liable to pay entertainment tax on the Cable

T.V. Net work connections given by it to its employees.

6. An SLP (Civil) No. 5293/96 came to be filed against the judgment dated 15-11-1995 of this Court before the Supreme Court at the instance of

the Hindalco and then the Supreme Court approvingly reproducing above mentioned observations of this Court, disposed of the SLP as under :

We endorse the said observation. If the petitioners file an application for exemption and if they satisfy the Government then the entertainment is

confined to their employees and is practically free, the Government shall consider the grant of exemption in accordance with law.

With the above observations, the SLP is disposed of.

7. The facts of the case of Hindalco and the instant petition are almost the same and the only difference pointed out is that whereas in the former

nominal charge of Rs. 5/- per month was collected for each connection towards maintenance, in the latter monthly charge of Rs. 8/- is said to be

towards membership fee and no amount for Cable T.V. Net work is said to have been charged. This difference, in reality, is no difference,

inasmuch as the Supreme Court had held in the case of Hindalco that if entertainment is provided to the employees free of charge, then the

Hindalco might approach the State Government for exemption. So far as the taxability under the Act is concerned, that was upheld by the

Supreme Court in the case of Hindalco. There being no substantial difference between the case of Hindalco and the instant case of NTPC, the

ratio of the former will squarely apply to the latter.

8. However, Sri Bhattacharya drew our attention to the pleadings, adumbrated in para 17 onwards. In para 20, it is averred that the people of

India while delegating to the legislature, the executive and the judiciary their respective powers reserved to themselves certain inalienable rights,

including the right to light, air and ether, which have been given to them by the creator. Such rights being given by the creator, says the petitioner,

are not subject matter of the Constitution or any existing law or law in force in India. Therefore, these rights cannot be taken away or abridged by

making any law"". In para 21 of the writ petition, it is averred that ether is a transmitter of T. V. Signals. As the right to ether is inalienable right, the

same cannot be made by Parliament or the legislature. It is, therefore, pleaded that ""the petitioners cannot be subjected to any such law and

without any valid law the impugned entertainment tax cannot be levied on the petitioner"". In para 23 of the petition, it is pleaded that the State of

U.P. cannot enact any law relating to Entry 31 of List I of 7th Schedule of the Constitution and that without enacting any law ""regarding wireless

broadcasting and other, like forms of communication which may include telecasting also, there is no question of levying any tax on the entertainment

through such telecasting. Entertainment being incident of telecasting covered by aforesaid Entry 31 of List 1 of Schedule 7 of the Constitution, tax

can be imposed on such entertainment only by the law enacted by the Parliament regarding the aforesaid Entry 31 of List 1 of the 7th Schedule.

Therefore, the impugned entertainment tax levied upon the aforesaid U.P. Act is ultra vires and invalid.

9. In para 22 of the writ petition the petitioner after reproducing Entry 31 of List 1 of 7th Schedule to the Constitution pleaded that the impugned

entertainment tax has not been levied under any Central Law, but under a State law and, therefore, that is invalid.

10. Harping on the above mentioned pleadings, the petitioner stated in para 32 of the writ petition as follows :

That most of the questions raised in the present petition were neither raised nor decided in the aforesaid writ petition No. 249 of 1995, Hindalco

Industries Ltd. and Anr. v. State of U. P. and Ors. (sic writ petition No. 505 of 1996) nor in writ petition No. 1350 of 1993, Universal

Communication System and Ors. v. State of U. P. and Ors. (sic writ petition No. 1353/93) nor the same had been argued and decided by the

Hon"ble Supreme Court of India in the aforesaid SLP filed by Hindalco Industry and another v. State of U. P. and another. Therefore, these

judgments cannot be called as precedents nor have binding authority as these judgments were passed sub-silentio.

11. The question is what turns upon the above mentioned new pleadings of the petitioner. In short, the submission of Sri Bhattacharya is that ether

is a transmitter of TV signals and the right to ether is inalienable right just like the right to light and right to air. He submits that unlike cinema

wherein feature films are exhibited through mechanical apparatus, transmission of signals through Cable TV is devoid of mechanical device and,

therefore, that falls under Entry 31, List 1 of the 7th Schedule. It is, therefore, averred in para 22 of the writ petition that entertainment tax can be

levied only by Central law and not by the State legislature. It is said that the State Legislature is incompetent to legislate regarding the topic, falling

under Entry 31, List 1 of the 7th Schedule.

12. We are not at all impressed by this submission of Sri Bhattacharya, which in our view is wholly untenable and fallacious. Sri Bhattacharya urges

that transmission of Cable T.V. being through telecasting, falls within the scope of Entry 31 of the Union List and that Parliament alone has a right

to impose tax thereon, but it is not at all made clear as to under which Entry, tax on entertainment would be levied by Parliament.

13. It is well settled that the entries in the three lists of the 7th schedule are of two distinct categories. In the first category are entries relating to

matter of general legislation. The second category consists of entries conferring power of taxation. This scheme obtains in each of the three Lists.

The various entries in the three Lists are not powers of legislation, but fields or the subject matter of legislation. Article 246 of the Constitution

confers power to make laws with respect to matters, enumerated in the three Lists. This position is well demonstrated by the Supreme Court in

M.P.V. Sundararamier and Co. Vs. The State of Andhra Pradesh and Another, in which the Court held (at p. 293) :

In List I, Entries 1 to 81 mention the several matters over which parliament has authority to legislate. Entries 82 to 92 enumerate the taxes which

could be imposed by a law of Parliament. An examination of these two groups of entries shows that while the main subject of legislation figures in

the first group, a tax in relation thereto is separately mentioned in the second. Thus Entry 22 in List I is ''Railways'', and Entry 89 is ''Terminal taxes

on goods or passengers, carried by railway, sea or air, taxes on railway fares and freights''. If Entry 22 is to be construed as involving taxes to be

imposed, then Entry 89 would be superfluous. Entry 41 mentions ''Trade and commerce with foreign countries; import and export across customs

frontiers''. If these expressions are to be interpreted as including duties to be levied in respect of that trade and commerce, then Entry 83 which is

''Duties of customs including export duties'' would be wholly redundant. Entries 43 and 44 relate to incorporation, regulation and winding up of

corporations, Entry 85 provides separately for corporation tax. Turning to List II, Entries 1 to 44 form one group mentioning the subjects on which

the States could legislate. Entries 45 to 63 in that list form another group and they deal with taxes. Entry 18, for example, is ''Land'' and Entry 45 is

''Land revenue''. Entry 23 is ''Regulation of mines'' and Entry 50 is ''Taxes on mineral rights''. The above analysis --and it is not exhaustive of the

entries in the Lists leads to the inference that taxation is not intended to be comprised in the main subject in which it might on an extended

construction be regarded as included, but is treated as a distinct matter for purposes of legislative competence. And this distinction is also manifest

in the language of Article 248, Clauses (1) and (2) and of Entry 97 in List I of the Constitution.

14. The Supreme Court summed up in para 55 of the M.P.V. Sundararamier and Co. Vs. The State of Andhra Pradesh and Another, that under

the scheme of the Entries in the Lists, taxation is regarded as a distinct matter and is separately set out.

15. Sri Bhattacharya only submits that transmission through telecasting comes within the scope of Entry 31 of the Union List, but he did not point

out as to under which entry entertainment tax will be levied. Perhaps, he is under the impression that transmission through telecasting being within

the scope of Entry 31, List I tax will also be imposed thereon under that Entry. This is not legally possible. Entry 31 List I simply sets out topic for

legislation on which Parliament can legislate under Article 246, but that does not mean that Parliament can levy tax under that Entry. Topic of

legislation and power to tax are set out separately in the three lists, appended to the 7th Schedule and, therefore, it was for Sri Bhattacharya to

clearly state as to under which entry Parliament have power to levy tax on entertainment being done through telecasting which according to him

falls within the scope of the topic, set out in Entry 31 List I. Even if it is assumed that in Cable T.V. Net work there is transmission through

telecasting and that falls within Entry 31 List I, the petitioner cannot succeed, unless power to tax is traced out under the Entries stated in List I,

Entry 31 List I of the 7th Schedule does not confer power of taxation. Even if the submission of Sri Bhattacharya that transmission through

telecasting falls under Entry 31 of Union List is assumed to be correct, that will not automatically exclude the power of the State legislature to make

laws for taxation even on matters in Entry 31.

16. Sri Bhattacharya has lost sight of the fact that the tax is not imposed under the Act on telecasting, but the tax is imposed on entertainment.

Telecating as argued by Sri Bhattacharya, may be a mode for providing entertainment, but tax is leviable on entertainment and not on the mode of

entertainment.

17. On the other hand, a Division Bench of this Court has held in Universal Communication System, Allahabad v. State of U.P. 1995 (29) ATJ

454 : (1995 AIHC 6398) that the Act of 1979 has been enacted with reference to Entry Nos. 33, 34 and 62 of the State List to the 7th Schedule

of the Constitution. Power to levy entertainment tax under the Act has also been upheld by another Division Bench of this Court in the case of

Hindalco Industries Ltd. and others Vs. State of Uttar Pradesh and others, , which decision has been upheld by the Supreme Court.

18. Tamil Nadu Entertainment Tax Act, 1939 (as amended by Act No. 37 of 1996) was enacted by the State of Tamil Nadu, which is pari

materia to the U.P. Entertainment and betting Tax Act, 1979. The former came to be amended by Act No. 37/96 to bring within its purview Cable

T.V. and entertainment tax was levied thereon. A large number of writ petitions were filed in the Madras High Court challenging the validity of the

Amendment Act. The ground of challenge, inter alia, was that the State legislature has no legislative competence to enact the Amendment Act, in as

much as the subject matter of the enactment falls exclusively within the province of Parliament, that is, List I of the 7th Schedule to the Constitution.

Such contention was negatived by the Madras High Court and then a SLP was filed and the decision of the Madras High Court was challenged

before the Supreme Court, which in its judgment reported as A. Suresh, etc. etc. Vs. State of Tamil Nadu and Another, etc. etc., , held as under

(para 7 at p. 495) (at p. 1891 of AIR) :

The High Court has dealt with each of these contentions advanced by the writ petitioners separately and exhaustively and rejected each of them.

Since we agree with the reasoning and conclusions arrived at by the High Court on all the issues, we think it unnecessary to deal with the above

submissions except contentions Nos. 3, 4 and 7.

19. Since the judgment of the Madras High Court is not before us, we are not in a position to elaborate the submissions advanced by the parties

before the Madras High Court, but it is manifest that the Supreme Court had agreed with the view, taken by the Madras High Court that the State

Legislature was competent to enact the enactment and that the imposition of entertainment tax on Cable T.V. did not fall within the province of

Parliament, that is, List I of 7th Schedule to the Constitution. Therefore, the contention of Sri Bhattacharya that the matter of imposition of

entertainment tax on Cable T.V. Network falls within the scope of Entry 31 List I to the 7th Schedule, has to be rejected.

20. Adverting to para 24 of the petition, Sri Bhattacharya submits that the impugned G. O. dated 12-4-1989 (Annexure "7A" to the writ petition)

notifying the rates of entertainment tax is violative of Article 19(1)(a) of the Constitution. Similar contention was raised before the Supreme Court

in the case of A. Suresh, etc. etc. Vs. State of Tamil Nadu and Another, etc. etc., . The Supreme Court disagreeing with such contention had

observed (Paras 9 and 10) :

.....The appellants are carrying on the business of providing entertainment. Their main activity is to show films and other material

using the video-cassettes or disc with the help of a V.C.R., disc player or a similar apparatus. By means of cables, the T. V. sets in the homes of

the subscribers are linked to their apparatus with a view to enable the subscribers to receive the programmes relayed by the appellants. For this

service, each subscriber is charged a, particular amount every month. This is their business. It may be true that providing entertainment is a form of

exercise of freedom of speech and expression. It is quite likely that they also relay the programmes broadcast by Doordarshan and other T.V.

Networks and some of them may be informative in nature or educational in character but the fact remains that their activity is a combination of two

rights, i.e., business and speech Sub-clauses (9) and (a) of Clause (1) of Article 19. There is no reason why the business part of it cannot be taxed.

If tax can be levied upon entertainment provided by cinemas, if taxes can be levied upon the Press, it is not understandable why the appellants"

activity cannot be taxed..... Where the freedom of speech gets intertwined with business, it undergoes a fundamental

change and it''s exercise has to be balanced against societal interests..... While there can be no tax on the right to exercise freedom

of expression, tax is leviable on profession, occupation, trade, business and industry.

21. In the case of Cable T. V. Operators, the right of speech is mixed up with business and, therefore, they are liable to be taxed under the Act.

Article 19(1)(a) is not violated in such cases.

22. In the Rustom Cavasjee Cooper Vs. Union of India (UOI), , it was held that the direct operation of the Act upon the fundamental right forms

the real test. Indirect or ancillary effect is immaterial and irrelevant. In that case, the newsprint policy of 1972-73 was challenged and then the

Court held that the effect and consequence of impugned policy upon the newspapers is directly controlling the growth and circulation of

newspapers.

23. In the instant case, the petitioner has furnished no material to show in what way has the imposition of tax directly affected the petitioners''

freedom of speech and expression and, therefore, the imposition of entertainment tax cannot be said to be violative of Article 19(1)(a).

24. For these reasons, the impugned G.O. cannot be held to be violative of Article 19(1)(a).

25. For the foregoing reasons, we are of the view that the so called new pleadings and reasoning are misconceived and unsustainable and the first

and second writ petition filed by three Cable T. V. Operators are fully covered by the decisions, rendered by this Court in the cases of Hindalco

Industries Ltd. and others Vs. State of Uttar Pradesh and others, and Universal Communication System (1995 AIHC 6398) (supra).

26. Sri Bhattacharya further submits that while making impugned assessments, the District Magistrate Sonebhadra (respondent No. 2) has

estimated the number of connections and the amounts said to have been charged for each connection, behind the back of the petitioners and purely

on the basis of conjectures and surmises and, therefore, the impugned assessments be set aside and the petitioners be relegated to pre-assessment

position to enable them to lead evidence before the said respondent in regard to actual number of connections and the amount purported to have

been charged from each member of the Centre. From a perusal of the impugned assessment orders, it clearly appears that the question, whether

the assessment orders on the petitioners in the first and the second writ petition were made in violation of principles of natural justice, is a question

of fact, which can be more appropriately considered by the appellate authority. Therefore, we decline to make interference under Article 226 with

the observation that the petitioner in the first and the second writ petition may file appeal against the impugned orders in accordance with the law

before the appellate authority.

27. Lastly, we come to the third writ petition, which is filed by a subscriber, praying, inter alia, that the respondents be restrained from realising

entertainment tax from him. In the scheme of the Cable T. V. Network assessment is made on the Cable T.V. operators and not on the subscriber.

The demand is, therefore, raised on the Cable T. V. operators by the authorities and not against the subscriber. The demand having been raised

against the Cable T.V. operators, the assessment can be challenged by the operator before the competent authority and if he succeeds, then

liability of the subscriber will be wiped out. It is for the Cable T.V. operator, who has provided cable connection to the petitioner (subscriber) to

challenge the assessment order and the petitioner has no right to challenge the same, as no order has been made against him by the respondents.

This petition, therefore, fails for this reason.

28. In the result, all the writ petitions fail and are dismissed.