(1995) 08 AHC CK 0157

Allahabad High Court

Case No: C.M.W.P. No. 805 of 1995

Natraj Chhabigrih		APPELLANT
	Vs	
State of U.P. and Another		RESPONDENT

Date of Decision: Aug. 17, 1995

Acts Referred:

- Constitution of India, 1950 - Article 14, 226
- Uttar Pradesh Entertainments and Betting Tax Act, 1979 - Section 3A

Hon'ble Judges: M.C. Agarwal, J; B.M. Lai, J

Bench: Division Bench

Advocate: S.N. Singh and R.N. Singh, for the Appellant;

Judgement

B.M. Lai, J.

By this petition Under Article 226 of the Constitution, Petitioner has prayed for issuance of an Order, direction or writ in the nature of certiorari quashing the amendment made in proviso to Section 3A of the Uttar Pradesh Entertainment and Betting Tax Act, 1979, (hereinafter referred to as ''the Act'') through the Government Order dated 17.10.1994 (contained in Annexure 6 to the writ petition) whereby those cinema owners who are availing grant-in aid from the State Government in the form of exemption from payment of entertainment tax, such as present Petitioner, have been debarred from charging Re. 1 per ticket towards maintenance charge.

2. In short, Petitioner''s case is that for promoting and uplifting the business of cinematograph exhibition, State of Uttar Pradesh vide Government Order No. 30-E V.6(15)-B-5. Vitta-Ha-Ka-Anubhag, dated 21.07.1986 provided for grant-in-aid to the cinema owners on the terms and conditions mentioned therein. One of the conditions is that such cinema houses will not keep their admission rate (inclusive of tax) more than Rs. 5. This incentive scheme was framed with a view to encourage the construction of new cinema houses in small towns having a population of not more than one lac.

3. Under the provisions of the Act, entertainment tax is payable by an exhibitor of Alms. There is no restriction on the rates of admission fee, but the tax Is a certain percentage of the admission fee charged by the exhibitor who is entitled to charge the same (tax) from the viewer. Thus, in other words, entertainment tax is levied on the admission fee and different rates of tax have been provided depending on the rate of admission fee charged. Thus, on every paisa realised as admission fee, the exhibitor has to pay the tax.

4. In Order to provide some relief to the exhibitors. The Government enacted Section 3A in the Act by the Uttar Pradesh Act 14 of 1992. Section 3A permitted the proprietor of a cinema to charge 25 palsa per ticket towards maintenance charge without payment of tax on this additional amount. This was subsequently increased to Re. 1 per ticket. The proviso to Section 3A however, prohibited those cinema owners who are availing the benefit of grant-in-aid under the aforesaid scheme, from charging this extra amount during the period they avail the benefit of the scheme. In other words, after the period of grant-in-aid is over, they too can avail the benefit u/s 3A.

5. Learned Counsel for the Petitioner submitted that the provisions of Section 3A of the Act is discriminatory in nature and violative of Article 14 of the Constitution of India. In support of his submissions, learned Counsel referred to a recent decision of this Court rendered in Civil Misc. Writ Petition No. 1 i90 of 1994, Kamla Palace v. State o/Uttar Pradesh and Ors. whereby a bunch of petitions has been disposed of on 10.07.95 and impugned proviso to Sub-section (1) of Section 3A of the Act and the Government Orders issued there Under have been declared ultra vires, inter alia, on the ground that they are violative of Article 14 of the Constitution of India holding that those cinema owners who are getting grant-in-aid from the State Government Under the incentive scheme and other cinema owners who are not getting grant-in-aid from the State Government, both belong to one and the same class.

6. Having heard learned Counsel and having perused impugned provisions, we are of the opinion that cinema owners getting grant-in-aid from the State Government under the incentive scheme, form quite a different class of persons from those cinema owners who are not getting grant-in-aid from the State Government and both the classes are not similarly situated as far as maintenance of cinema houses are concerned. Those who are availing grant-in aid have been given financial benefit by the State Government by granting total exemption from tax in the first two years and 75% exemption in the third year. This is one class of cinema owners to which the Petitioner belongs. They have been prohibited from charging maintenance charges only for the period during which they are getting grant-in-aid and not for ever. The other class of cinema owners are those who have to pay tax ranging from 50 to 150% on every paisa p(admission fee.

7. The other distinction between the two classes of cinema owners which is directly related to the question of maintenance is that the cinema houses which are entitled to and are availing grant-in-aid are all new because this benefit is available only for the first three years of commencement of business. They have new buildings, new plant and machinery and furniture. Their expenditure on maintenance will, therefore. be negligible. On the other hand, the other class of cinema houses consists of old and very old ones requiring substantial expenditure on repairs, maintenance and renovation.

8. The two classes are thus distinct and the difference between them is real and substantial. Therefore, discrimination between them is based on a reasonable and Intelligible classification and they have been granted different reliefs. The grant-in-aid class Is enjoying total exemption from tax for two years and 75 per cent exemption for another year. The other class is enjoying only partial and insignificant exemption limited to only 25 paisa and then one rupee of admission fee.

9. The point in issue is covered by a catena of decisions of Apex Court wherein Under identical circumstances, their Lordships of Apex Court have ruled that discretionary powers of Legislature to make classifications in laws dealing with taxation matters is much wider as compared to other laws. The taxation power of the State Is not one which transcends the fundamental rights conferred by Part III of the Constitution, therefore, conferment of a reasonable area of discretion by a fiscal statute is valid. If there is ground for rational distinction, imposition of unequal taxes will not offend the equal protection clause. In taxation, even more than in other fields, Legislature possesses the greatest freedom in classification. Therefore, it is allowed lo pick and choose districts, objects, persons, methods and even rates for taxation, if it does so reasonably. Even in cinematograph matters, if two species of entertainment were offered by two different methods, by two different means and magnitude, in different surroundings, viz., classifying replay of video tapes, video cassette, and video records through the medium of any video tape player, video cassette players, etc., levying of different entertainment duty could not be said to be violative of Article 14 of the Constitution.

10. Article 14 of the Constitution deals about the equality before law and the touchstone for determining constitutionality of the classification made by the Legislature is that neither equals can be treated unequally nor unequal can be treated equally. The test is as to whether the classification is palpably arbitrary, notwithstanding the fact that in the field of taxation. Legislature has very wide discretion in making classification for tax purposes.

11. In The Twyford Tea Co. Ltd. and Another Vs. The State of Kerala and Another, , Hon''ble Hidayatullah, C.J. (as his lordship then was) speaking for the majority of the Constitution Bench, observed:

It may also be conceded that the uniform tax falls more heavily on some plantations than on others because the profits are widely discrepant. But does that involve discrimination. If the answer be in the affirmative, hardly any tax direct or indirect would escape the same ensure for taxes touch purses of different lengths and the very uniformity of the tax and its equal treatment would become its undoing. The rich and the poor pay the same taxes irrespective of their incomes in many instances such as the sales tax and the profession tax, etc." It was further observed:

This indicates a wide range of selection and freedom in appraisal not only in the objects of taxation and the manner of taxation but also in the determination of the rate or rates applicable.

12. Similarly in R.K. Garg and Others Vs. Union of India (UOI) and Others, , their Lordships of Apex Court observed that Article 14 does not forbid reasonable classification of persons, objects and transactions by the Legislature for the purpose of attaining specific ends. The first rule is that there is always a presumption in favour of the constitutionality of a statute and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. It has been further stated, giving reference to Holmes, J., that the Legislature should be allowed some play In the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-Jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the Legislature. The court should feel more Inclined to give judicial reference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights ure involved.

It is further ruled that the court must always remember that ''legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent and that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry.

13. Similarly in State of Maharashtra and Others Vs. Madhukar Balkrishna Badiya and Others, , considering the discrimination part, it is ruled that it is well to remember that a taxation law cannot claim immunity from the equality clause in Article 14 of the Constitution, but In view of the intrinsic complexity of fiscal adjustments of diverse elements, a considerably wide discretion and latitude in the matter of classification for taxation purpose is permissible.

14. In Income Tax Officer, Shillong and Others Vs. R. Takin Roy Rymbai and Others, , it is ruled that mere fact that a tax falls more heavily on some in the same category, is not by itself a ground to render the law invalid. It is only when within the range of its selection, the law operates unequally and cannot be Justified on the basis of a valid classification, that there would be a violation of Article 14.

15. In Mrs Meenakshi alias Rama Bai and Others Vs. State of Karnataka and Others, , wherein on abolition of the octroi and with a view to raise the revenue, tax on passenger vehicle was increased and no like increase was effected in respect of the goods vehicle, it was held that inspite of the use of the same roads, the types of vehicles would not form the same class. It was observed that in the matter of taxation, the rate of tax and objects to be taxed are to be determined by the Legislature and unless it is found to be so unreasonable, the court would not interfere with the latitude enjoyed by the Legislature in this behalf.

16. Therefore, where the classification is based upon some real and substantial distinction bearing a Just and reasonable relation to the object sought to be achieved by the Legislature and If the statute is assailed on being violative of Article 14 of the Constitution, what is to be borne in mind is that there is always a presumption in favour of the constitutionality of the statute.

17. In P.M. Ashwathanarayana Setty and Others Vs. State of Karnataka and Others, , Hon''ble Venkatachaliah C.J., as his Lordship then was, speaking for the court made following observations:

The lack of perfection in a legislative measure does not necessarily imply its unconstitutionality. It is rightly said that no economic measure has yet been devised which is free from all discriminatory impact and that in such a complex arena in which no perfect alternatives exist, the court does well not to impose too rigorous a standard of criticism, under the equal protection clause, reviewing fiscal services.

18. In Federation of Hotel and Restaurant Association of India, etc., Vs. Union of India (UOI) and Others, , Apex Court ruled that it is now well-settled that though taxing laws are not outside Article 14, however, having regard to the wide variety of diverse economic criteria that go into formulation of a fiscal policy, Legislature enjoys a wide latitude in the matter of selection of persons, matters, events, etc., for taxation. If there is equality and uniformity within each group, the law would not be discriminatory.

19. In the instant case, admittedly there are two classes of cinema owners. One is of those who are getting grant-in-aid and the other is of those who are not getting grant-in-aid. Those who are getting grants-in-aid are not allowed to charge Re. 1 per ticket towards maintenance and those who are not getting grants-in-aid are allowed to charge Re. 1 per ticket towards maintenance. Thus, both form different classes and are different from each other. There is no equality and uniformity in the two and, therefore, the classification is real and substantial; consequently, cannot be said to be violative of Article 14 of the Constitution. Article 14 prohibits different treatment to similarly circumstanced classes. Here both the classes are different, as stated above.

20. In the Instant case, it is not that the provision is challenged on the ground of legislative incompetence. It is challenged only on the ground of Article 14 of the

Constitution of India. However, entries 33 and 34 of List II of VII Schedule of the Constitution of India. empower the State Legislature to enact laws for entertainment and betting.

21. Learned Counsel for the Petitioner submitted that the proviso cannot take away the benefit given in the main provision inasmuch as in the instant case, main provision of Section 3A confers benefit on all cinema owners to charge Re. 1 per ticket towards maintenance charges whereas by the impugned proviso, this benefit is prohibited to those cinema owners who have been getting grant-in-aid.

22. Suffice it to say, this 9 argument has no legs to stand in the Instant case. As a general rule, proviso carves out an exception to the main provision to which it has been enacted as proviso. Here in the instant case, main provision provides for a benefit to all the cinema owners for charging Re. 1 per ticket towards maintenance charges and the proviso prohibits the same benefit to those cinema owners who have already been extended benefit by the Government in the shape of grant-in-aid. Thus, there appears nothing wrong in the proviso. The proviso is used normally to remove special cases from the general enactment and provide for them specially. A proviso may simply be an exception of what is clearly defined In the first part.

23. In M/s. Mackinnon Mackenzie and Co. Ltd. Vs. Audrey D''costa and another, , It is ruled that a proviso does not travel beyond the provision to which it is a proviso. It Is a cardinal rule of Interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other.

24. Learned Counsel for the Petitioner, while giving reference of Full Bench decision of this Court rendered in Ram Pratap Singh v. State of Uttar Pradesh And Ors. (Civil Misc. Writ Petition No. 8374 o/ 1992) Decided On 06.02.1995, submitted that the precedents which enunciate rules of law form the foundation of administration of Justice under our system and that the courts are bound to accept as correct Judgments of the courts of co-ordinate jurisdiction. Therefore, this Division Bench is also bound by the decision of earlier Division Bench rendered in Civil Misc. Writ Petition No. 1190 of 1994, Kamla Palace v. State of Uttar Pradesh And Ors.

25. No doubt, if the Bench comes to the conclusion that the decision rendered by the Bench of co-ordinate jurisdiction does not suffer from any infirmity and does not require to be considered by a larger Bench, the same is to be accepted as correct judgment. But where the Bench comes to the conclusion that the decision rendered by the Bench of co-ordinate Jurisdiction is not fully in consonance with the settled proposition of law laid down by the Apex Court, the Benches of co-ordinate Jurisdiction are not lagging behind in referring the matter to the larger Bench applying the doctrine of stare decisis with reference to Apex Court decisions.

26. In view of the discussions made and decisions of Apex Court referred above and particularly the decision of Apex Court recently rendered in State of Bihar and Others Vs. Sachchidanand Kishore Prasad Sinha and Others, where their Lordships have ruled that in case of such classification, there will always be some instances where one gets an advantage and the other suffers a disadvantage but that is no ground for Invalidating a statute and more particularly a taxing statute we are of the considered opinion that decision of Division Bench rendered in Civil Misc. Writ Petition No. 1190 of 1994, Kamla Palace v. State of Uttar Pradesh and Ors. Decided On 10.07.1995, requires reconsideration by a larger Bench.

Accordingly papers be laid before Hon''ble the Chief Justice for constituting the larger Bench.