
(2000) 03 CAL CK 0037

Calcutta High Court

Case No: Writ Petition No. 2470 (W) of 2000

Amitava Mitra

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: March 29, 2000

Acts Referred:

- Bengal Amusements Tax Act, 1922 - Section 11, 11(4), 11B
- Bengal Finance (Sales Tax) Act, 1941 - Section 19A, 3(1)
- Constitution of India, 1950 - Article 226, 323B
- West Bengal Taxation Tribunal Act, 1987 - Section 2

Citation: (2001) 123 STC 129

Hon'ble Judges: Amitava Lala, J

Bench: Single Bench

Advocate: Dinabondhu Chowdhury, Amal Kumar Saha and Iresh Pal, for the Appellant; Tarun Roy and Partha Pratim Chatterjee, for the Respondent

Final Decision: Allowed

Judgement

Amitava Lala, J.

A very interesting point is involved in this writ petition.

2. The petitioner is running a cinema hall under the name and style "Swapna" within the District of Howrah. The petitioner has been paying taxes in respect of the said cinema hall as payable under the Bengal Amusements Tax Act. At present, the system of embossing on the saleable tickets to the purchasers upon payment of advance tax is going on. There is no dues of tax in respect of the said cinema hall.

3. A staff of the office of the concerned Bureau of Investigation sent all information to the cinema hall for making a visit to the Sub-Inspector of Police and on being refused a seizure has been made by the Sub-Inspector of Police, Bureau of Investigation as on 2nd February, 2000. From the seizure list, it appears that such

seizure has been made u/s 11(4) of the Bengal Amusements Tax Act. On that very day, a notice was issued directing the petitioner to appear before the said officer along with certain documents.

Section 11 of the Bengal Amusements Tax Act (5 of 1922) reads as follows :

"(1) The Collector or any other officer authorised by the State Government in this behalf may, subject to such conditions as may be prescribed, require any proprietor--

(a) to produce before him any accounts, books, records, registers, unsold tickets and counterfoils of sold tickets or other documents relating to any entertainment ;

(b) to furnish any information relating to any entertainment as may be deemed necessary for the purposes of this Chapter.

(2) The Collector or any other officer authorised by the State Government in this behalf may enter any place of entertainment while the entertainment is proceeding, and any place ordinarily used as a place of entertainment at all reasonable times with a view to seeing whether the provisions of this Chapter or any rules made thereunder are being complied with.

(3) All accounts, registers, books, records, unsold tickets and counterfoils of sold tickets and other documents relating to any entertainment shall at all reasonable times be open to inspection by the Collector or any other officer authorised by the State Government in this behalf.

(4) If the Collector or any other officer authorised by the State Government in this behalf has reason to believe that any person liable to pay any entertainments tax or show tax under this Chapter is attempting to evade such payment he may, for reasons to be recorded in writing, seize such accounts, registers, books, records, unsold tickets and counterfoils of sold tickets and other documents as may be necessary and shall grant a receipt for the same and shall retain the same for such period as may be necessary for examination thereof.

(5) The Collector and every officer authorised under this section shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code."

This Act was substituted by the West Bengal Act (40 of 1975).

4. It appears from the scope and ambit of the section that the Collector or any other officer authorised by the State Government in this behalf may take the necessary steps for the purpose of due compliance of the section.

5. Definition of the "Collector" is given u/s 2(3a). Collector means the Collector of a district and includes the Collector of Stamp Revenue, Calcutta. This sub-section also substituted by Act 40 of 1975. There is no definition of other officers in the definition clause of the section. No doubt, the entertainment tax as will be available in Section

2(1) and elsewhere are applicable for the purpose of admission of a person as a spectator or as one of the audience and admission for the purpose of amusement by taking part in an entertainment. Therefore, it is an indirect tax, but not the direct tax.

6. A notification was issued being No. 3399-FT dated 20th September, 1985 by the Deputy Secretary of the West Bengal, Finance Department, Taxation in exercise of the power conferred by Section 11 of the Bengal Amusements Tax Act, 1922 authorising some of the officers thereunder in the civil wing and in the police wing attached to the Bureau of Investigation constituted u/s 19A of the Bengal Finance (Sales Tax) Act, 1941 to do the needful. Section 19A of the Bengal Finance (Sales Tax) Act, 1941 is given hereunder :

"(1) The State Government may constitute a Bureau of Investigation for discharging the functions referred to in Subsection (3).

(2) The Bureau of Investigation (hereinafter referred to as the Bureau) shall consist of an Additional Commissioner of Commercial Taxes (hereinafter referred to as the Special Officer) and such number of other persons appointed under Sub-section (1) of Section 3 to assist the Commissioner of Commercial Taxes as the State Government may deem fit to appoint.

(3) The Bureau may, on information or of its own motion, or when the State Government so directs, carry out investigation or hold inquiry into any case of alleged or suspected evasion of tax payable under this Act as well as malpractices connected therewith and send a report in respect thereof to the Commissioner.

(4) The Bureau may, for the purposes of holding investigation or inquiry referred to in Sub-section (3), exercise all the powers referred to in Sections 14, 14A and 14B :

Provided that the Commissioner may on receipt of a report under Sub-section (3), require the Bureau to transfer to him, any accounts, registers or documents relating to the said report seized by the Bureau and on such transfer such accounts, registers or documents shall be retained by him subject to the provisions of Subsection (3A) of Section 14 of this Act.

(5) The Bureau may after a case has been investigated or inquired into by it, by order, assess, reassess, collect or enforce payment of tax in the case, under this Act.

(6) The Special Officer shall assign such functions of the Bureau to such of the officers referred to in Sub-section (2) as the Special Officer may think fit.

(7) The Bureau shall have, for carrying out the purposes of this Act, the same powers as are referred to in Section 21A.

(8) For the removal of doubts it is hereby declared that, subject to the other provisions contained in this Act, the Special Officer shall be competent to exercise all the powers which are exercisable under this Act by an Additional Commissioner of

Commercial Taxes, appointed u/s 3A, and any person, appointed under Subsection (1) of Section 3, when appointed in the Bureau, shall be competent to exercise all the powers which are exercisable by such person under this Act.

(9) Notwithstanding anything contained in Sub-section (1) of Section 3, the Special Officer and the other persons appointed in the Bureau under Sub-section (2) shall have the jurisdiction over the whole of West Bengal."

7. Such section was also inserted retrospectively vide Bengal Finance (Sales Tax) (Amendment) Ordinance, 1973 followed by Bengal Finance (Sales Tax) (Third Amendment) Act, 1974 (W.B. Act 7 of 1974).

8. The above provision of the Bengal Finance (Sales Tax) Act was introduced retrospectively in 1974 and the provisions as laid down in the Bengal Amusements Tax Act, 1922 was given effect in 1975 and ultimately the notification was issued on 20th September, 1985 given an effect of both under such notification.

9. In 1994, the Bengal Finance (Sales Tax) Act, 1941 was repealed and the West Bengal (Sales Tax) Act, 1994 was introduced by virtue of Section 106 of the new Act.

10. Section 107 of the new Act given a transitional provision and u/s 107(e) the Bureau of Investigation constituted under the Bengal Finance (Sales Tax) Act, 1941, and continuing to have jurisdiction and powers under that Act immediately before the appointed day, shall, on and from the appointed day, be deemed to have been constituted, and shall have jurisdiction and powers, under this Act, and the Special Officer, and other persons appointed under Sub-section (1) of Section 3 of that Act to assist the Commissioner, appointed in the Bureau of Investigation as aforesaid and continuing in office immediately before the appointed day, shall, on and from the appointed day, be deemed to have been appointed in the Bureau under this Act and shall continue in office as such till such Special Officer or other person ceases to be appointed in the Bureau.

11. Therefore, the Bureau of Investigation as was available on the earlier Act was remained under the new Act by virtue of such provision.

12. The composition and power of the Bureau of Investigation is also given u/s 7 of the new Act. It appears from Subsection (1) therein that the State Government may constitute a Bureau of Investigation for discharging the functions referred to in Subsection (3). Sub-section (3) says the Bureau may, on information or of its own motion, or when the State Government or the Commissioner so directs, carry out investigation or hold inquiry into any case of alleged or suspected evasion of tax as well as malpractices connected therewith and send a report in respect thereof to the Commissioner, Therefore, such Bureau of Investigation as made available u/s 7F of the new Act is made for a specific purpose which is available under the West Bengal Sales Tax Act, 1994. The notification dated 20th September, 1985 being annexure B to the petition has become automatically ineffective upon the repealing of the

Bengal Finance (Sales Tax) Act, 1941 since no Bureau can be constituted u/s 19A of the Act. Hence, the notification as issued as far back as on 20th September, 1985 and the steps taken by the authority pursuant to such notification become inoperative.

13. Learned counsel appearing for the respondents contended that by virtue of Section 11(4) of the Bengal Amusements Tax Act any other officer authorised by the State Government is entitled to take appropriate steps. This provision is same with as Section 19A of the Bengal Finance (Sales Tax) Act, 1941. Moreover writ jurisdiction is not the forum for deciding such type of issue in view of Article 423B of the Constitution of India.

14. So far the later part of the argument is concerned, the respondent has taken much longer time to establish the same. Article 423A is not relevant for the purpose but Article 423B is relevant for the purpose. As per the Article 423B appropriate Tribunal as formed under the said article is entitled to decide the disputes, complaints or offences with respect to all or any other matters specified in Clause (2) and Legislature has power to make laws. Leaving aside others, Clause (2)(a) of Article 423B speaks about the jurisdiction of the Tribunal in entertaining the matters in respect of levy, assessment, collection and enforcement of any tax.

15. According to Mr. Tarun Roy, learned counsel appearing on behalf of the respondents, that by virtue of such article the jurisdiction of the High Court was excluded and given in the hands of a Tribunal. He further contended that to give shape to such article being 323B of the Constitution of India, appropriate legislative body introduced the West Bengal Taxation Tribunal Act, 1987, which is relevant for the purpose along with the Rules, 1988, Regulations 1989 and necessary amendments up to this date are squarely applicable hereunder. According to him, no person shall be qualified as appointed Chairman of such Tribunal unless he has been a Judge of a High Court or has held, for a period of not less than one year, the office as a judicial member. u/s 6 of the Act, the Tribunal shall exercise with effect from the date of notification, all the jurisdiction, power and authority exercisable immediately before that day by courts including the High Court but excluding the Supreme Court of India for adjudication or trial of the disputes or complaints or offences with respect to all matters, levy, assessment, collection and enforcement of any tax under any specified State Act and matters connected therewith or incidental thereto provided that where the matter relates to disposal of the question of constitutional validity of any provision of any specified State Act, matter shall be decided by a Bench constituted of at least three members of which the Chairman shall be one.

16. Section 14 of the Act excludes the jurisdiction of the High Court along with others leaving aside the jurisdiction of the Supreme Court wherein Section 15 of such Act refers to transfer of all matters including appeals in respect of levy, assessment, collection and enforcement of tax and matters connected therewith or

incidental thereto pending before the High Court. Subsequently, by an amendment appellate power to the High Court is given. It is apparent from the allocation of business of this Court that such appeal is being heard by a division Bench of this Court. Therefore, hearing of the single Bench of this Court in respect of such matter was curtailed or excluded by virtue of amendment of the Constitution and given in the hands of the Tribunal.

17. He further stated that in [L. Chandra Kumar Vs. Union of India and others](#), it was held by the Supreme Court that all decisions of such a Tribunal will, however, be subject to scrutiny under Article 226/227 before a division Bench of the High Court within whose jurisdiction it falls. The Tribunals will, nevertheless, continue to act as the courts of first instance in respect of the areas of law for which they have been constituted. It will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislation (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal.

18. Therefore, by virtue of such analogy, the questions as agitated before this Court cannot be heard by this Bench.

19. In reply, Mr. Dinabondhu Chowdhury, learned counsel appearing for the petitioner contended that this is not the first time such issue is agitated before this Court. Even prior thereto, in so many occasions this issue was raised before this Court on numerous occasions either before the single Bench or before the division Bench of this Court when the State authorities lost the battle in this respect. He has given references of such unreported orders as made in W.P. No. 50(W) of 1999 (Kalpana Biswas v. State of West Bengal) and MAT No. 2629 of 1999 (State of West Bengal v. Rathindra Cinema).

20. It appears that even a SLP was moved on this ground in the Supreme Court of India being special leave to appeal (Civil) No. 15533 of 1999 (State of West Bengal v. Rekha Cinema) when the same was dismissed. Challenge was made in respect of jurisdiction of the High Court vis-a-vis the jurisdiction of the Tribunal as agitated herein.

21. It appears to me that no reason was given by the Supreme Court in respect of dismissal of the application. Therefore, it cannot be construed what was the basis of the order but if the supply copy of the written notes of argument are the grounds of special leave to appeal before the Supreme Court then of course this matter is similar in nature.

22. It appears from the grounds that the Supreme Court was called upon to decide the issue in respect of Bengal Amusements Tax Act, 1922 to refer the matter to the Tribunal formed by the State following the [L. Chandra Kumar Vs. Union of India and others](#), as referred above.

23. It is to be remembered that factually the challenge is seizure of the authority not backed by any law. Therefore, if this Court is prima facie satisfied in respect of the same that the process of seizure is made without any basis of foundation of law itself then the same cannot be turned down merely by saying that by virtue of Article 423B the concerned Tribunal has jurisdiction alone because the Tribunal is made admittedly for the purpose of levy, assessment, collection and enforcement of tax. Save and except, Sub-clause (2)(a) under Article 423B, i.e., in respect of levy, assessment, collection and enforcement of any tax, the Tribunal in no way concerned in respect of the matters. If at all the search and seizure is declared as proceeded rightly and if at all ultimately tax become payable on the basis of such declaration of the Tribunal, if at all formed, can interfere but Tribunal suo motu cannot assume its jurisdiction. Therefore, court has to go by the case made out before the same as it is.

24. It is a well-settled case of the respondent is that Section 11(4) of the Bengal Amusements Tax Act, 1922 is equivalent to Section 19A of the Bengal Finance (Sales Tax) Act, 1941. But I find that basis of such argument is absolutely wrong. The Bureau of Investigation u/s 19A of the Act speaks about the composition of the same which comprises Additional Commissioner of Commercial Taxes and such number of other persons appointed under Sub-section (1) of Section 3 to assist the Commissioner of Commercial Taxes as the State Government may deem fit and proper. Sub-section (1) of Section 3 of the Act speaks that State Government may appoint a person to the Commissioner of Commercial Taxes, together with such other persons to assist him as it thinks fit. Therefore, in all, Bureau of Investigation means a composition of Commissioner or Additional Commissioner of Commercial Taxes wherein Sub-section (4) of Section 11 of the other Act speaks about the Collector and other officer authorised by the State Government.

25. Now, if in such "a case, the administrative order is allowed to proceed on the basis of the notification dated 20th September, 1985 without the power given under the statute it has to be declared as illegal.

26. It may be noted that the works might have been similar in nature but that does not necessarily mean one set of officer will encroach the field of other set of officers who are entrusted to do their duties under the relevant statute. If it is so, the issuance of notice and/or act pursuant thereto is to be declared as de hors the law.

27. Secondly, if the transitional provision u/s 7 of the new Act, i.e., West Bengal Sales Tax Act, 1994 is become operative then the Bureau of Investigation has to be formed u/s 7 of the Bengal Sales Tax Act, 1994, but not u/s 19A as it was there before which was repealed by virtue of coming into force of the new Act. Therefore, even in such a condition, the action of Bureau of Investigation cannot be operative.

28. Thirdly, a seizure was made u/s 11(4) of the Bengal Amusements Tax Act, 1922, but a complaint has required to be filed before the learned Magistrate, First Class,

and in view of Section 11B of such Act, learned Magistrate cannot take cognizance of offence without previous sanction of the State Government. Therefore, the seizure, if any, without such sanction is also bad in accordance with law and if any of the officer exceeded the jurisdiction by doing so without prior sanction from the State Government and lodged an FIR by putting the matter before the learned Magistrate and subsequently obtain such sanction, such post facto ratification cannot be sustainable.

29. Fourthly, levy, assessment, collection and enforcement of tax is one part and inspection, search and seizure are other part. It might occur that inspection, search and seizure is made for the purpose of levy, assessment, collection and enforcement of tax. But no such case has been made out in the notice as well as in the seizure list that the same was done for the said purpose. Nowhere a case has been made by the respondents that there is any dispute of tax in respect of the cinema hall. For the purpose of revenue earning, process of embossing has been introduced upon payment of prior advance tax. Therefore, when the prior advance tax has not been disputed inspection, search and seizure, if any, cannot be construed as legal action for the purpose of levy, assessment, collection and enforcement of any tax.

30. Moreover, if I go through the search and seizure, one after another, I shall find that the officer concerned has collected the tickets on which he found that there is no valid embossing in the ticket book. Since there is a system of advance tax in respect of issuance of such tickets whether the embossing is properly legible or illegible making hardly any difference before the court of law. Had it been the position that no advance tax was paid and the party is in default, inspection, search and seizure then made would have been a case of inspection, search and seizure in connection with any of the four categories, i.e., levy, assessment, collection and enforcement of any tax.

31. The final point in this respect is as to whether this Court under its writ jurisdiction is competent to entertain the writ petition in view of Article 423B of the Constitution of India or not. As I come to know from the respondents that in view of Article 423B of the Constitution of India as inserted in the 42nd Amendment, West Bengal Taxation Tribunal has been formed under the Act of 1987, I have to see the scope and ambit of such Act to understand whether at all the matter as referred hereunder can go back therein.

32. It appears to me that the preamble itself, it is stated that the Taxation Tribunal has been formed in respect of any disputes, complaints or offences with respect to the matters relating to levy, assessment, collection and enforcement of any tax under any specified State Act, in pursuance of Article 423B of the Constitution of India and for matters connected therewith or incidental thereto. Under the definition clauses in Section 2(k) meaning of this specified State Act is given. Specified State Act means a State Act specified in the Schedule to this Act. If I go back to the Schedule made u/s 2(k) of the Act, I shall find that the following Acts are

covered under the category of specified State Act for the purpose of hearing before the Taxation Tribunal. Such are as follows :

"SCHEDULE

[See section 2(k)]

Year	Number	Short title of the specified State Act.
1941	VI	The Bengal Finance (Sales Tax) Act, 1941.
1941	XI	The Bengal Raw Jute Taxation Act, 1941.
1954	IV	The West Bengal Sales Tax Act, 1954.
1974	XI	The West Bengal Motor Spirit Taxation Act, 1974.
1979	VI	The West Bengal State Tax on Professions, Trades, Callings and Employments Act, 1979."

33. Therefore, under no stretch of imagination, such applicability of amendment of the Constitution of India and formation of Taxation and Tribunal will be applicable in this present case. Therefore, taking into totality of the circumstances of this matter, I allow this writ petition. Notification under challenge stands quashed as a result whereof proceedings under such notification cannot be sustainable. Therefore, the same is also liable to be quashed and quashed. The seized articles will be returned accordingly.

34. Thus, the writ petition stands disposed of. No order is passed as to costs.

The prayer for stay of operation of the judgment and order made, considered and refused.

Let urgent xerox certified copy of the judgment and order, if applied for, be given to the learned Advocates for the parties within 15 days from the date of putting

requisites.