

PETITIONER:
STATE OF GUJARAT ETC.

Vs.

RESPONDENT:
HOTEL RATRANI THROUGH ITS PROPRIETORSHRI KANJI VISHWRAM PATE

DATE OF JUDGMENT: 10/12/1996

BENCH:
K. RAMASWAMY, G.T. NANAVATI

ACT:

HEADNOTE:

JUDGMENT:

WITH
CIVIL APPEAL NOS.4514-15/84 AND 132-33/86
O R D E R

The main appeal by special leave arises from the judgment and order of the High Court of Gujarat, made on March 1/4, 1985 in Special Civil Application No.4459/84 and batch. The other appeals relate to the decision of the Bombay High Court in Ramesh Waman Roke & Ors. vs. State of Maharashtra [AIR 1984 Bom.345]. The Gujarat High Court has followed the decision of the Bombay High Court. In all the cases, the facts are not in dispute.

The respective legislatures brought Section 6-A in Bombay and the Gujarat Entertainment Tax Act, 1977 providing for levy and collection of tax on entertainment by Video Cassette Recorder or Player on Television or Videoscope in any place of entertainment or omnibus etc. at the rates specified therein. The latter Act came into force w.e.f. June 14, 1984. The Government made Rules by name, Gujarat Cinema (Regulation & Exhibition by Video) Rules, 1984 9 for short, the "Rules". The Rules have come into force on the same date. The respondents filed the writ petitions challenging the constitutionality of Section 6-A, Rules 13(1) and 19(ii) of the Rules. The High Court while upholding the constitutionality of the Act and the Rules held that the gross collection of the entertainment tax on the Video Recorder or Video Player on Television or Videoscope is arbitrary and violative of Article 14. It also held that the Rules are ultra vires. Thus, these appeals by special leave.

In Venkateshwara Theater vs. State of A.P. & Ors [(1993) 3 SCC 677], this Court considered the constitutionality of Sections 4, 4-A and 5 of the A.P. Entertainment Tax Act, 1939 providing for levy and collection of entertainment tax on the gross collection in Cinema theater. It was held in paragraph 16 that entertainment tax that would be collected over and above the average occupancy rate would constitute the profit of the proprietor. In the circumstances, it cannot be said that the adoption of the system of consolidated levy in Section 4(1), as amended by Act 24 of 1984, alters the nature of tax and

it ceases to be a tax on entertainment.

In paragraph 17, on the gross collections, it was held thus:

"It has been urged that since both the modes of levy of tax were prevalent prior to the enactment of Act 24 of 1984, an option should have been given to the proprietor of a cinema theatre to choose between either of the two modes and that under the impugned provisions the choice is confined to two modes of assessment under the same system of consolidated levy based on the gross collection capacity per show, one on the basis of gross collection capacity per show under Section 4(1) and other on the basis of gross collection capacity per show for a prescribed number of shows per week under Section 5. We find no substance in this contention. Once it is held that tax on entertainment could be levied by either of the two modes, viz., per payment for admission or gross collection capacity per show, it is for the legislature to decide the particular mode or modes of levy to be adopted and whether a choice should be available to the proprietor of the cinema theatre in this regard. The legislature does not transgress the limits of its legislative power conferred on it under Entry 62 of List II if it decides that consolidated levy on the basis of gross collection capacity per show shall be the only mode for levy of tax on entertainments."

In paragraph 29 and 30, it was held thus:

"29. In the instant case, we find that the legislature has prescribed different rates of tax by classifying theaters into different classes, namely, air-conditioned, air-cooled, ordinary (other than air-conditioned and air-cooled), permanent and semi-permanent and touring and temporary. The theaters have further been categorised on the basis of the type of the local area in which they are situate. It cannot, therefore, be said there has been no attempt on the part of the legislature to classify the cinema theatres taking into consideration the differentiating circumstances for the purpose of imposition of tax. The grievance of the appellants is that the classification is not perfect. What they want is that there should have been further classification amongst

the theatres falling in the same class on the basis of the location of the theatre in each local area. We do not think that such a contention is well founded.

30. In relation to cinema theatres it can be said that the attendance in the various cinema theatres within a local area would not be uniform and would depend on factors which may vary from time to time. But this does not mean that cinema theatres in a particular category of local area will always be at a disadvantage so as to be prejudicially affected by a uniform rate as compared to cinema theatres having a better location in the same local area. It is, therefore, not possible to accept the contention that the impugned provisions are violative of the right to equality guaranteed under Article 14 of the Constitution on the basis that unequals are being treated equally."

Thus this Court had upheld the power of the Legislature to levy gross collections on the entertainment tax. Section 6-A reads as under:

"6-A(1) There shall be levied and paid to the State Government, a tax on an entertainment by video cassette recorded or video cassette player on television or videoscope calculated at the following rates, namely:-

(a) in any place of entertainment other than that mentioned in clause (b).

(I) within the limits of a local area, the population of which as ascertained at the last preceding census and notified by the State Government in the official gazette after such census is more than 1,00,000, two rupees per seat in such place of entertainment:

(II) within the limits of a local area, the population of which was ascertained at the last preceding census and notified by the State Government in the official gazette after such census is more than 50,000 but not more than 1,00,000, one rupee per seat in such place of entertainment.

(III) in any other area, seventy paise per seat in such place of entertainment.

(b) in any omnibus which is used to the State exclusively as contract carriage having provision for entertainment by video cassette recorder or video cassette player on television or videoscope, two

rupees per seat in the omnibus.

(2) For the purpose of levy of tax under this section, it shall be presumed that

(a) in the case of a place of entertainment falling under clause (a) of sub-section (1), a proprietor provides at least three entertainments on every day, and

(b) in the case of any omnibus falling under clause (b) of sub-section (1), a proprietor provides at least one entertainment on every day;

unless the proprietor otherwise informs the prescribed officer at such time and in such manner as may be prescribed.

3(a) Notwithstanding anything contained in clause (a) of sub-sec. (I), every proprietor to whom any of the provisions of that clause apply shall have an option of payment of tax at the rates specified in clause (d) to be exercised as provided in clause (b) within ninety days from the date of the commencement of the Gujarat Entertainments Tax (Amendment) Act, 1984 and any person who becomes such proprietor after that date may exercise such option within sixty days from such date.

(b) A proprietor desiring to exercise an option referred to in clause (a) shall make an application to the prescribed officer in such form as may be prescribed, to permit him to make in lieu of amount of tax payable by him under clause (a) of sub-section (I), payment of tax at the rates specified in clause (d).

(c) On an application under clause (b), the prescribed officer may grant such permission and thereupon subject to clause (e) the payment of tax shall be made accordingly.

(d) where a proprietor has been permitted to pay tax under clause (c) he shall be liable to pay monthly at the following rates, namely:-

In the case of a place of entertainment within the local limits of a local area referred to -

(1) in sub clause (I) of clause (a) of sub-section (1) -

(i) five rupees per seat per day where the proprietor has declared that he holds not more than three entertainments per day; and

(ii) six rupees per seat per day where the proprietor has declared

that he holds more than three entertainments per day;

(2) in sub-clause (II) of clause (a) of sub-section (1)

(i) three rupees per seat per day where the proprietor has declared that he holds not more than three entertainments per day; and

(ii) four rupees per seat per day where the proprietor has declared that he holds more than three entertainments per day,

(e) A proprietor who has opted for payment of tax under clause (a), may at any time but not before the expiry of a period of twelve months, by a notice in such form as may be prescribed, addressed to the prescribed officer, revoke his option from the commencement of any month following that in which the notice is given.

(4) For the purpose of levy of tax under sub-section (1) every proprietor shall furnish such returns to the prescribed officer in such manner or such period and before such date as may be prescribed.

(5) Save as otherwise provided in sub-sections (1) to (4), the provisions of this Act (except sections 3, 4 and 6) and the rules made thereunder shall, so far as may be, apply in relation to the tax livable under sub-section (1) as they apply in relation to the tax livable under sections 3 and 4; Rules 13 and 19 of the Gujarat Cinemas (Regulations of Exhibition by Video) Rules, 1984 are also impugned here. They are also reproduced herein-below:-

13. Power to refuse license: (1) The Licensing authority shall have absolute discretion to refuse a licence if the video cinema is likely to cause obstruction, inconvenience, annoyance, risk, danger or damage to the residents or passers by in the vicinity of the cinema.

(2) The licensing authority shall refuse a license if the distance between the existing permanent semi-permanent or touring cinema and the video cinema is less than 150 metres.

19. Access to inspecting officers, The licensee shall give free access to the video cinema at all honors to -

(i) the licensing authority or any officer nominated by the licensing authority under the Act and the

Rules and for checking that the provisions of the Act and the Rules are being complied with;

(ii) any Police Officer who is required by a general or special order of the licensing authority of the District Superintendent of Police or the Commissioner of Police, as the case may be."

Shri Krishan Mahajan, learned counsel appearing for the respondents, contends that Section 3 of the Act envisages levy of the tax on payment for admission to entertainments on every payment for admission to an entertainment, other than the payment for admission referred to in clause (b), a tax at the following rates specified therein. The Video Recorder or a Player when exhibited entertains the customer; it does not entertain a person on admission. For admission, therefore, it is not an entertainment tax. Accordingly it cannot be levied. We find no force in the contention. It is an admitted position that they entertain the persons on playing the Video Recorder or Video Games on admission or in the omnibus, as enacted under the Act. Thereby, obviously on charging the admission rates or while operating the omnibus during journey, the Video Recorder or Video Player has been exhibited for entertaining traveling passengers. Thus it is an admission to entertain the person on payment. It is then contended that the composition was not available to them at flat rate because there is no regular intake of the persons or of number of shows. Accordingly, the rule is arbitrary. We find no force in the contention.

It is seen that the Rule envisages imposition of the levy of the tax on the basis of the population of the place of exhibition. If it is a place where the population is one lakh and more @ Rs.2/- per seat and if the population is between one lakh and 50,000, @ Re. 1 per seat and in other places at Re.0.75 per seat. It is for the licensee to specify to the authorities, how many persons are entertained. As far as the gross collections are concerned, it cannot be investigated to recall by a rule as to how many of them in each show are admitted. Sub-section 3(2) provides that for the purpose of levy of tax under this section, it shall be presumed that in the case of a place of entertainment failing under clause (a) of sub-section (1), a proprietor provides at least three entertainments on every day and in the case of any omnibus failing under clause (b) of sub-section (1), a proprietor provides at least one entertainment on every day. It is only a presumptive evidence since in the absence of definite information, Rule-making authority leaves it to the licensee to establish by making application as to how many persons he has been entertaining, unless the proprietor otherwise informs the prescribed officer at such time and in such manner as may be prescribed. Therefore, the proprietor or the licensee has been given option to inform the prescribed authority at such time and in such manner, as the case may be, as per the rules. Sub-section 3(d) postulates that where a proprietor has been permitted to pay tax under clause (c), he shall be liable to pay monthly at the rates specified thereunder. Clause (e) shows that a proprietor who has opted for payment of tax under clause (a), may at any time but not before the expiry of a period of 12 months, by a notice in such form as may be prescribed, addressed to the prescribed officer, revoke his option from the commencement of any month following that in which the notice is given.

Thus it could be seen that he has been given an option

for payment of the entertainment tax in the manner laid down in Clause (b). Under Clause 3(a), he is required to make an application as provided under clause (e). Thus considered, it is a valid rule for the due collection of the entertainment tax when the proprietor of the video-recorder/video games entertains the persons admitted into the theater or exhibits the video recorder/video player in omnibus at the rates specified thereunder. Thus the Rule is valid and is not beset with any arbitrariness in the exercise of the power. Accordingly, we uphold Section 6-A and affirm the findings of the High Court declaring Rule 13(2) to be ultra vires. Rule 22 is void. Rule 14(2) is incidental to and consequence of enforcement of regulation.

The appeals are accordingly allowed, the writ petitions stand dismissed. No costs.