CASE NO.:
Appeal (civil) 4319 of 1991

PETITIONER:
THE STATE OF KARNATAKA & ORS. APPELLANTS

Vs.

RESPONDENT:
M/S. DRIVE-IN ENTERPRISES RESPONDENT

DATE OF JUDGMENT: 13/03/2001

BENCH:
V.N. Khare & Ruma Pal

JUDGMENT:

V.N.KHARE, J.:
L...I...T.....T.....T.....T.....T.....T.....T..J

This appeal is directed against the judgment of the Karnataka High Court passed in the writ petition filed by the respondent herein whereby sub-clause (v) of Clause (i) of Section 2 of the Karnataka Entertainment Tax Act (hereinafter referred to as the Act) was struck down as being beyond the legislative competence of the State Legislature.

The respondent herein, is the owner and proprietor of a Drive-in- Theatre in the outskirts of Bangalore city wherein cinema films are exhibited. It is alleged that the Drive-in-Theatre is distinct and separate in its character from other cinema houses or theatres. The Drive-in-Cinema is defined under Rule 111-A of Karnataka Cinemas (Regulation) Rules 1971 (hereinafter referred to as the Rules) framed in exercise of the powers conferred on the State Government under Regulation 22 of the Karnataka Cinemas (Regulation) Act, 1964. The definition of Drive-in-Cinema runs as under :

Drive-in-Cinema means a cinema with an open-air theatre premises into which admission may be given normally to persons desiring to view the cinema while sitting in motor cars. However, where an auditorium is also provided in a drive- in-cinema premises, persons other than those desiring to view the cinema while sitting in motor cars can also be admitted. Such drive-in-cinemas may have a capacity to accommodate not more than one thousand cars.

The Drive-in-Theatre of the respondent with which we are concerned here is a cinema with an open-air-theatre into which admissions are given to persons desiring to see cinema while sitting in their motor cars taken inside the theatre. The Drive-in-Theatre has also an auditorium wherein other persons who are without cars, view the film exhibited therein either standing or sitting. The persons who are admitted to view the film exhibited in the auditorium are required to pay Rs.3/- for admission therein. It is not

disputed that the State Government has levied entertainment tax on such admission and the same is being realised. However, if any person desires to take his car inside the theatre with a view to see the exhibition of the films while sitting in his car in the auditorium, he is further required to pay a sum of Rs.2/- to the proprietor of the Drive-in-Theatre. The appellant-State in addition to charging entertainment tax on the persons being entertained, levied entertainment tax on admission of cars inside the theatre. This levy was challenged by the proprietors of the Drive-in-Theatres by means of writ petitions before the Karnataka High Court which were allowed and levy was struck down by a single Judge of the High Court. The said judgment was affirmed by a Division Bench of that Court. It was held, that the levy being not on a person entertained (i.e. Car/Motor vehicle), the same was ultra vires. After the aforesaid decision, the Karnataka Legislature amended the Act by Act No.3 of 1985. By the said amendment, sub clause (v) was added to Clause (i) of Section 2 of the said Act. Simultaneously, Sections 4A and 6 of the Act were also amended. After the aforesaid amendments, the appellant herein, again levied entertainment tax on admission of cars into Drive-in- Theatre. This levy was again challenged by means of a petition under Article 226 of the Constitution and the said writ petition was allowed, and as stated above , the High Court struck down sub-clause (v) to Clause (i) of Section 2 of the Act.

Learned counsel appearing for the appellant urged that insertion of sub-clause (v) of Clause (i) of Section 2 of the Act is a valid piece of legislation and after its insertion and amendment of Section 6 and Section 4A of the Act, the appellant-State was competent to levy and realise the entertainment tax on the admission of cars/motor vehicles inside the Drive- in-Theatre. Learned counsel urged that in pith and substance, the levy is on the person entertained and not on the admission of cars/motor vehicles inside the Drive-in-Theatre. It was also urged that the State Legislature is fully competent to impose such a levy.

Learned counsel for the respondent, inter alia, urged that the Drive- in-Theatre is a different category of cinema unlike cinema houses or theatres, that, the special feature of the Drive-in-Theatre is that, a person can view the film exhibited therein while sitting in his car, that, the admission of cars/motor vehicles into Drive-in theatre is incidental and part of concept of Drive-in-Theatre, that, the film that is shown in Drive- in- Theatre is like any other film shown in cinema houses, and that, the State Legislature is not competent to levy entertainment tax on admission of motor vehicles inside the Drive-in theatre. Learned counsel further argued that the incidence of tax being on the entertainment, the State Legislature is competent to enact law imposing tax only on person entertained. In nut-shell, the argument is that the State Legislature can levy entertainment tax on human beings and not on any inanimate object. According to learned counsel, since the vehicle is not a person entertained, the State Legislature is not competent to enact law to levy entertainment tax on the admission of cars/motor vehicles inside the Drive-in-Theatre.

On the arguments of learned counsel of parties, the question arises as to whether the State Legislature is competent to enact law to levy tax under Entry 62 of List II

of Seventh Schedule on admission of cars/motor vehicles inside the Drive-in-Theatre.

Where as in the present case, the vires of an enactment is impugned on the ground that the State Legislature lacks power to enact such an enactment, what the Court is required to ascertain is the true nature and character of such an enactment with reference to the power of the State Legislature to enact such a law. While adjudging the vires of such an enactment, the Court must examine the whole enactment, its object, scope and effects of its provision. If on such adjudication it is found that the enactment falls substantially on a matter assigned to the State Legislature, in that event such an enactment must be held to be valid even though nomenclature of such an enactment shows that it is beyond the competence of the State Legislature. In other words, when a levy is challenged, its validity has to be adjudged with reference to the competency of the State Legislature to enact such a law, and while adjudging the matter what is required to be found out is the real character and nature of levy. In sum and substance, what is to be found out is the real nature of levy, its pith and substance and it is in this light the competency of the State Legislature is to be adjudged. The doctrine of pith and substance means that if an enactment substantially falls within the powers expressly conferred by the Constitution upon the Legislature, it cannot be held to be ultra vires merely because its nomenclature shows that it encroaches upon matters assigned to another heading of legislation. The nomenclature of a levy is not conclusive for determining its true character and nature. It is no longer res integra that the nomenclature of a levy is not a true test of nature of a levy. In Goodyear India Ltd. & Ors. v. State of Haryana & Anr. 1990 (2) SCC p.71, it was held that the nomenclature of an Act is not conclusive and for determining the true character and nature of a particular levy with reference to the legislative competence of Legislature, the Court will look into pith and substance of the legislation. In M/s. R.R. Engineering Co. v. Zila Parishad, Bareilly & Anr. 1980 (3) SCC p.330 the question arose as to whether the Zila Parishad can levy tax on calling or property. The argument was that the levy is tax on income, therefore, it is ultra vires. However this Court held thus :

The fact that the tax on circumstances and property is often levied on calling or property is not conclusive of the nature of the tax; it is only as a matter of convenience that income is adopted as a yardstick or measure for assessing the tax. The measure of the tax is not a true test of the nature of the tax. Considering the pith and substance of the tax, it falls in the category of a tax on a mans financial position, his status taken as a whole and includes what may not be properly comprised under the term property and at the same time ought not to escape assessment.

(emphasis supplied)

In Kerala State Electricity Board vs. Indian Alluminium Co. 1976 (1) SCC p.466, it was held thus:

For deciding under which entry a particular legislation falls the theory of 'pith and substance has been evolved by the courts. If in pith and substance a legislation falls within one list or the other but some portion of the

subject-matter of that legislation incidentally trenches upon and might come to fall under another list, the Act as a whole would be valid notwithstanding such incidental trenching.

In Governor General in Council vs. Province of Madras AIR 1945 P.C. p.98, the question arose as to whether the levy was sales tax or excise duty. In that connection the Privy Council held :

Its real nature, its pith and substance is that it imposes a tax on the sale of goods. No other succinct description could be given of it except that it is a tax on the sale of goods. It is in fact a tax which according to the ordinary canons of interpretation appears to fall precisely within Entry No.48 of the Provincial Legislative List.

In Leventhal & Ors. v. David Jones Ltd. AIR 1930 P.C. p.129, the question arose as to whether the Legislature can impose Bridge tax when the power to Legislate was really in respect of tax on land. The levy of Bridge tax was held valid under legislative power of tax on land. It was held as thus:

The appellants contention that though directly imposed by the legislature, the bridge tax is not a land tax, was supported by argument founded in particular on two manifest facts. The bridge tax does not extend to land generally throughout New South Wales, but to a limited area comprising the City of Sydney and certain specified shires, and the purpose of the tax is not that of providing the public revenue for the common purposes of the State but of providing funds for a particular scheme of betterment. No authority was vouched for the proposition that an impost laid by statute upon property within a defined area, or upon specified classes of property, or upon specified classes of persons, is not within the true significance of the term a tax. Nor so far as appears has it even been successfully contended that revenue raised by statutory imposts for specific purposes is not taxation. supplied) (emphasis In@@ IIIIIIIII

Raza Buland Sugar Co. v. Rampur Municipality AIR 1962 Allahabad p.82, which was subsequently approved in 1965 (1) SCR p.970, the question arose as to whether the Municipal Board can levy water tax when the power to legislate was in respect of the land and building. The High Court held that in pith and substance water tax is not on water but it is a levy on land and building.

We are in full agreement with the aforestated statement of law and are of the view that it is not the nomenclature of the levy which is decisive of the matter, but its real nature and character for determining the competency on power of State Legislature to enact law imposing levy. It is in the light of the aforesaid statement of law, we would examine the validity of levy challenged in the present case. Before we deal with the question in hand, we would first examine the provisions of the Act. Section 2 (a) of the Act defines admission. Admission includes admission as a spectator or as one of the audiences, and admission for the purpose of amusement by taking part in an entertainment. Clause (b) of Section 2 defines admission to an entertainment which includes admission to any place in which an entertainment is held. Clause (cb) of Section2

defines cinema theatre means any place of entertainment in which cinematography shows are held to which persons are admitted for payment. Clause (e) of Section 2 of the Act defines entertainment which means a horse race or cinematography shows including exhibition of video films to which persons are admitted on payment.

Section 2 (i) defines payment for admission which runs as under: i) any payment made by a person who having been admitted to one part of a place of entertainment is subsequently admitted to another part thereof for admission to which a payment involving a tax or a higher tax is required.

ii) xxx xxx
iii) xxx xxx
iv) xxx xxx

v) any payment for admission of a motor vehicle into the auditorium of a cinema known as drive- in-theatre.

(emphasis supplied)

Section 3 is a charging section. The relevant provisions run as under : 3. Tax on payments for admission to entertainments. (1) There shall be levied and paid to the State Government on each payments for admission (excluding the amount of tax) to an entertainment, [other than the entertainment referred to in sub-clause (iii) of clause (e) of Section 2), entertainment tax at 70 per cent of such payment].

(2) Notwithstanding anything contained in sub- section (1) there shall be levied and paid to the State Government (except as otherwise expressly provided in this Act) on every complimentary ticket issued by the proprietor of an entertainment, the entertainments tax at the appropriate rate specified in sub-section (1) in respect of such entertainment, as if full payment had been made for admission to the entertainment according to the class of seat or accommodation which the holder of such ticket is entitled to occupy or use; and for the purpose of this Act, the holder of such ticket shall be deemed to have been admitted on payment.

Sub-Section (1) of Section 6 runs as under: 6. Manner of payment of tax. (1) [Save as otherwise provided in Section 4-A or 4-B, the entertainments tax shall be levied in respect of each payment for admission or each admission] on a complimentary ticket and shall be calculated and paid on the number of admissions.

Entry 62 of List II of Seventh Schedule empowers the State Legislature to levy tax on luxuries, entertainment, amusements, betting and gambling. Under Entry 62, the State Legislature is competent to enact law to levy tax on luxuries and entertainment. The incidence of tax is on entertainment. Since entertainment necessarily implies the persons entertained, therefore, the incidence of tax is on the person entertained. Coming to the question whether the State Legislature is competent to levy tax on admission of cars/motor vehicles inside the Drive-in-Theatre especially when it is argued that cars/motor vehicles are not the persons entertained. Section 3 which is charging provision,

provides for levy of tax on each payment of admission. Thus, under the Act, the State is competent to levy tax on each admission inside the Drive-in-Theatre. The challenge to the levy is on the ground that the vehicle is not a person entertained and, therefore, the levy is ultra vires. It cannot be disputed that the car or motor vehicle does not go inside the Drive-in-Theatre of its own. It is driven inside the Theatre by the person entertained. In other words the person entertained is admitted inside the Drive-in Theatre along with the car/motor vehicle. Thereafter the person entertained while sitting in his car inside the auditorium views the film exhibited therein. This shows that the person entertained is admitted inside the Drive-in Theatre along with the car/motor vehicle. This further shows that the person entertained carries his car inside the Drive-in-Theatre in order to have better quality of entertainment. The quality of entertainment also depends on with what comfort the person entertained has viewed the cinema films. Thus, the quality of entertainment obtained by a person sitting in his car would be different from a squatter viewing the film show. The levy on entertainment varies with the quality of comfort with which a person enjoys the entertainment inside the Drive-in-Theatre. In the present case, a person sitting in his car or motor vehicle has luxury of viewing cinema films in the auditorium. It is the variation in the comfort offered to the person entertained for which the State Government has levied entertainment tax on the person entertained. The real nature and character of impugned levy is not on the admission of cars or motor vehicles, but the levy is on the person entertained who takes the car inside the theatre and watches the film while sitting in his car. We are, therefore, of the view that in pith and substance the levy is on the person who is entertained. Whatever be the nomenclature of levy, in substance, the levy under heading admission of vehicle is a levy on entertainment and not on admission of vehicle inside the Drive-in-Theatre. As long as in pith and substance the levy satisfies the character of levy, i.e. entertainment, it is wholly immaterial in what name and form it is imposed. The word entertainment is wide enough to comprehend in it, the luxury or comfort with which a person entertains himself. Once it is found there is a nexus between the legislative competence and subject of taxation, the levy is justified and valid. We, therefore, find that the State Legislature was competent to enact sub-clause (v) of clause (i) of Section 2 of the Act. We accordingly hold that the impugned levy is valid.

For the aforesaid reasons, we are of the view that the High Court fell in serious error in holding that sub- clause (v) of clause (i) of Section 2 of the Act is ultra vires Entry 62 of List II of Seventh Schedule. Consequently, this appeal deserves to be allowed. The judgment under appeal is set aside. The writ petition shall stand dismissed. The appeal is allowed. There shall be no order as to costs.