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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 270 OF 1996

Maneck Davar, carrying business as sole proprietor in the name and style of Spenta Multimedia of Bombay Indian Inhabitant, having his office at Newspaper House, 2nd Floor, Sasson Docks, Colaba, Bombay 400 005

.... Petitioner

vs

- 1 State of Maharashtra,
- 2 Secretary, Government of Maharashtra, Cultural Affairs Department, Mantralaya, Ministry of Cultural Affairs & Sports, Bombay 400 032
- 3 Collector, Bombay Suburban District, having his office at BMRDA Building, 4th Floor, Bandra (East), Bombay 400051
- 4 Recovery Officer, having his office at Customs House, Bombay 400 023
- 5 National Association for The Blind, having its office at Jehangir Wadia Building, 51, Mahatma Gandhi Road, Fort, Bombay 400 023
- 6 Dinu Gandhi, of Bombay Indian Inhabitant Vice-Chairman Programme Committee for National Association for The Blind, having its office at Jehangir Wadia

Building, 51, Mahatma Gandhi Road,
Fort, Bombay 400 023

.... Respondent

**ALONG WITH
WRIT PETITION NO. 116 OF 1996**

- 1 National Association for The Blind,
having its office at Jehangir Wadia
Building, 51, Mahatma Gandhi Road,
Fort, Bombay 400 023
 - 2 Dinoo V. Gandhi, of Bombay, Indian
Inhabitant, Vice-Chairman, Programme
Committee, National Association for The Blind,
Finance Raising Committee, residing at
22-23, Franclin Apartment,
Pali Mala Road, Pali Hill, Bandra,
Bombay 400 050
- Petitioners

vs.

- 1 The Collector, Bombay Suburban District,
Entertainment Branch,
having his office at BMRDA Building,
2nd Floor, Bandra (East), Bombay 400051
 - 2 State of Maharashtra,
through the Govt. Pleader,
High Court, Bombay
 - 3 Mr. Maneck Davar, of
Spenta Multi Media
having his office at
Newspaper House, 2nd Floor, Sasson
Docks, Colaba, Bombay 400 005
 - 4 Collector of Bombay, having
his office at Old Custom House,
Bombay 400 001
- Respondents

Dr. Milind Sathe, Senior Advocate i/by M/s. Prakash & Co for the petitioner in WP/270/1996 and for Respondent No.3 in WP/116/1996.

Mr. A.I. Patel, Addl. G.P. for respondent/State in both matters.

**CORAM: ANOOP V. MOHTA AND
A. S. GADKARI, JJ.**

DATE : December 22, 2016

ORAL JUDGMENT (Per Anoop V. Mohta, J.):

Called out from final hearing board.

2 Both the Petitioners have challenged the common orders/action initiated by the State of Maharashtra (the State), through their respective Departments. The following prayers are made in Writ Petition No.270/1996:

“(A) That this Hon'ble court be pleased to declare that the performance held on 26th April 1995 at Andheri Sports Complex by foreign music group Bon Jovi as exempt from payment of entertainment duty and surcharge in view of the Notification dated 23rd October 1972, 22nd November 1973, 4th January 1994 and 30th July 1977 issued under the provisions of the Bombay

Entertainment Duty Act and the Rules, 1923 framed thereunder.

(B) calling for the records and proceedings of the Petitioner case pertaining to the impugned orders dated 9th May 1995, 25th September 1995, 13th October 1995, 21st November 1995 and 8th January 1996. (Exhibits – J, W, Z, CC and DD respectively hereto) and after going into the legality and propriety thereof, be pleased to quash and set aside the same.”

The events and related common, legal issues are relevant for adjudication of the writ petitions.

3 In 1958, The then Bombay Government under section 7 of the Bombay Entertainment Duty Act (the Act) made Rules known as “Bombay Entertainment Duty Rules, 1958” (the Rules). The Rules provide for grant of exemption from payment of entertainment duty by issuing Notifications. On 24/5/1959, a Government Resolution was passed providing for exemption to foreign music / orchestra from

the payment of entertainment duty. On 23/10/1972, it was clarified that “A doubt has been raised whether the phrase ‘originating in India’ did not cover foreign amateur artists who were residing in India for reasons merely participating in dramatic performances.”. The clarified that Indian dramatic performances originating in India should also include foreign amateur artist including tourist who are residing India for reasons other than participating in dramatic performances and making financial benefits for themselves and dramas performed by such foreign amateur artist should be exempted from the liability to pay entertainment duty. On 27/11/1973, further Government Resolution issued, *inter alia*, providing that all performances of music (classical, light and instrumental) and classical and folk dancing from western and eastern countries should be exempted from liability to pay entertainment duty. On 4/1/1974, a clarification was sought as to whether beat music should be included within the scope of the previous order where ball dancing and cabaret dancing are also involved. The Government clarified that while beat music should be included within the scope of these exemption orders, but ball dancing and cabaret dancing are not covered by these orders for the purpose of general exemption from the liability to pay entertainment duty

under the Act. The Government further clarified that performances of music (classical, light and instrumental) and classical and folk dancing from western and eastern countries would be taxed if they include even one single small item of ball dancing and cabaret dancing.

4 On 30/7/1977, the Government issued a Resolution dealing with the levy of surcharge in respect of entertainment permanently exempted from payment of entertainment duty under Section 6 (3) of the Act. The Government directed that surcharge levied under Section 3 AA of the Act was not to be collected on the following firms of entertainment from the date of issue of this Resolution:

“...

(n) All performance of music (classical, light and instrumental) and classical and folk dancing from Western and Eastern countries.

(o) Beat Music. But performances of music (classical, light and instrumental) and classical and folk dancing from Western and Eastern countries would be taxed if they include even one single small item of Ball Dancing and/or Cabaret Dancing.”

5 On 6/3/1995, the Petitioner (W. P./270/1996) addressed a letter to Respondent No.5 delineating the proposal and the approved outlines of the proposed programme. On 17/4/1995, the Petitioner informed Respondent No.5 that they were organising a performance by an International rock group "Bon Jovi" in late April 1995 and as the Group was keen on performing for charity. They suggested the name of Respondent No.5. On 24/4/1995, the Additional Collector, Bombay Suburban District informed Respondent Nos.5 and 6 that the Music Show proposed would attract the entertainment duty and surcharge. Petitioner thereupon made a formal representation to the Secretary, Cultural Affairs, Government of Maharashtra. On 25/4/1995, Respondent No.5 (National Association of Blind) addressed a letter seeking exemption from the payment of entertainment duty and surcharge. On 25/4/1995, An order was passed by the Social Welfare Cultural Affairs and Sports Department exempting the Music Show from payment of entertainment tax and surcharge. The order refers to three Government Resolutions dated 23/10/1972, 4/1/1973 and 30/7/1977 passed by Social Welfare Cultural Affairs, Sports and Tourism Department. On 26/4/1995, the Music Show was held accordingly.

6 On 5/5/1995, the Petitioner made a complaint to the Joint Commissioner of Police, Greater Bombay Shri M.N. Singh, as he apprehended that certain people who had entered the Andheri Sports Complex i.e. the venue of the music show without tickets or on the basis of forged tickets. On 9/5/1995, the Deputy Secretary, of the State withdrew the exemption as granted on 26/4/1995. On 15/5/1995, Respondent Nos.5 and 6 made a representation against the unilateral cancellation of exemption. On 21/05/1995, the Petitioner addressed a letter to the Deputy Commissioner of Police, inter alia, complaining about the forged tickets. On 30/5/1995, the Petitioner once again requested the Deputy Commissioner of Police (Crime Branch) to carry out investigation. On 6/6/1995 and 15/6/1995, the Collector, BSD called upon Respondent Nos.5 and 6 to forward necessary documents and other details / particulars asked for therein with regard to the Music Show. On 12/7/1995, the Petitioner forwarded to Respondents the particulars of expenses incurred for the Music Show and all other particulars. Respondent No.5 sought further particulars and the Petitioner supplied it. On 17/8/1995, a notice was sent by the office of the Collector, BSD to

Respondent Nos.5 and 6 calling upon them to pay the entertainment duty with surcharge of Rs.69,72,000/- and Rs.20,00,000/- respectively totalling to Rs.89,92,000/-. On 16/8/1995, Respondent No.5 addressed a letter to the Collector, BSD. On 22/8/1995, Respondent No.5 also addressed a similar letter to the Petitioner requesting him to send audited statement of accounts. On 31/8/1995, the Petitioner was summoned to the office of the Collector and his statement was recorded. On 31/8/1995, Petitioner handed over audited statement of accounts.

7 On 28/9/1995, the Collector, BSD directed that an amount of Rs. 89,92,300/- as entertainment duty and surcharge, be recovered jointly and severally from the Petitioner and Respondent No.5 as arrears of land revenue. On 12/10/1995, the Petitioner addressed a letter to Deputy Commissioner of Police, Crime Branch, Economic Offences, requesting to investigate the matter on urgent basis. On 13/10/1995, Respondent No.5 addressed a letter to the Hon'ble Minister for Cultural Affairs forwarding him copy of Income – Expenditure Accounts and requesting him to look into the matter and do the needful. On 13/10/1995, Letter addressed by the Collector,

BSD calling upon the Petitioner to make payment of alleged duty of Rs.89,92,000/- with surcharge, failing which the same will be recovered as arrears of land revenue. On 18/10/1995, the Petitioner through his Advocate addressed a letter to the Collector, BSD drawing the attention of the Collector to the Resolutions exempting the performance of Music from payment of entertainment duty and surcharge. Copy of the letter was sent to the Secretary, Government of Maharashtra, Social Welfare Department. On 16/11/1995, Respondent No.5 addressed a reply to the Collector through their Advocates. On 21/11/1995, Notice was sent to the Petitioner by the Recovery Officer making a claim of payment of the alleged duty arrears and threatening the Petitioner with attachment for recovery of the same. On 8/1/1996, again a notice was sent to the Petitioner by the Recovery Officer.

8 On 17/1/1996, Respondent No.5 filed Writ Petition No. 116 of 1996, challenging some of the orders. On 24.1.1996 and 5/2/1996, the Petitioner sought details of exemption for other similar shows from the State Department.

9 On 7/2/1996, writ petition No.270/1996 was filed. On 14/2/1996, an Order was passed by this Court directing deposit of amount by the Petitioner which was to be paid to National Association for Blind from the proceeds of the concert. On 26/2/1996, the other Writ Petition was admitted and it was observed that the cancellation of exemption granted was prima facie illegal and hence the ad-interim order was granted restraining the Collector from taking any further steps. National Association for Blinds (Respondent No.5) was permitted to withdraw the amount deposited in the Court. On 26/2/1996, the Writ Petition was admitted. In view of the interim relief granted in Writ Petition No. 116/1996, no further interim relief was ordered in other matter. In February 1996, Affidavit of Under Secretary, Social Welfare and Cultural Department was filed. On 15/12/2008, an Affidavit of the Entertainment Duty Officer on behalf of the Collector was also filed.

10 The Bombay Entertainments Duty Act, 1923 provides a charging section, i.e. section 3, as under:

“There shall be levied and paid to the State Government on all payments for admission to any entertainment duty

*a duty (hereinafter referred to as ‘entertainment duty’)
at the following rates*”

Sections 6 of the Act as read and referred by the Counsel
for their respective submissions are reproduced as under :

Section 6 of the Act :

“6 (1) Entertainments duty shall not be levied on payments for the admission to any entertainment where, in the case of any area for which a Commissioner of Police has been appointed, the Commissioner of Police or elsewhere, the District Magistrate, is satisfied that -

(a) the whole of the takings thereof are devoted to philanthropic or charitable purposes without any charge on the takings for any expenses of the entertainment; or

(b) the entertainment is of a wholly educational character; or

(c) the entertainment is provided partly for educational or partly for scientific purposes by a society, institution or committee not conducted or established for profit.

(2) Where the Commissioner of Police or the District Magistrate, as the case may be, is satisfied that the whole of the net proceeds of an entertainment are devoted to philanthropic or charitable purposes, and that the whole of the expenses of the entertainment do not exceed twenty per cent of the receipts, the amount of the entertainments duty paid in respect of the entertainment shall be refunded to the proprietor.

(3) The State Government may, by general or special order, exempt any entertainment or class of entertainments from liability to entertainments, duty, subject to such terms and conditions, if any, as may be specified in the order.”

Rule 25 of The Bombay Entertainments Duty Rules, 1958 is as under :

“25 Applications for exemption under Section 6(3)

:- All applications for exemption under sub-section (3) of Section 6 of the Act shall be made to the prescribed officer not later than ten days before the date of the entertainment. An application for exemption not presented within such period may, unless sufficient cause shown for not making the application within ten days as aforesaid, be rejected.”

11 The Petitioner's senior counsel crystalised submissions are as under :

“(1) That the exemption granted from payment of entertainment duty for the concert of Bon Jovi held by the Petitioner for the benefit of Respondent No.5 – National Association for Blinds was on the basis of the Government Resolutions which automatically grant

general exemption from entertainment duty and surcharge in respect of class of events.

(2) That the exemption was not on the basis of charitable nature of the Petitioner or any organization or any condition attached to the exemption order.

(3) The exemption, therefore, was not granted on the basis of any alleged premise or representation and, therefore, there was no question of suppression of any material facts or misrepresentation.

(4) The exemption order granted has been revoked by order dated 9/5/1995 without hearing the Petitioner and in complete breach of principles of natural justice.

(5) That the order dated 25/9/1995 passed by the Collector is for recovery of the entertainment duty and surcharge on the basis of cancellation order 9/5/1995 which was in breach of natural justice.

(5) That the amount of entertainment duty and surcharge demanded of Rs.89,92,000/- is on an imaginary and hypothetical assessment and without any material particulars.”

12 The learned AGP has resisted the above submission by referring to Section 6(3) of the Act and Rule 25, submitted that even if there are general exemptions, still for claiming the exemption, as contemplated under the law, a specific Application is a must and, therefore, the submission referring to the general exemptions itself is not sufficient to accept the case of Petitioners.

13 After going through the provisions so reproduced above and the plain reading of the Section makes the position very clear, that ultimately it is for the State to decide and grant the general and/or special exemption. In the present case, as noted, the general exemptions were granted by the State at the relevant time to such joint show/programme organised by the Petitioners. There was no issue with regard to the nature of the programme and the fact that it falls within the ambit of exemption so provided in the Circulars. After considering the submission and reading even Sections 3 & 6 and Rule 25, we see there is no such mandate to this extent that even though there was a general exemption granted by the State, the concerned party still need to apply for the special exemption under sub-section (3) of Section 6 of the Act. In this case, the exemption was granted before

the Show. We are not concerned with the other general permission/licence and or intimations which are required under the other provisions of law.

14 Admittedly, the Petitioner in WP/116/1996 had applied for exemption and it was granted by the specific order. The same was revoked without giving any show cause notice, hearing and apart from that, without any reasons. The revocation was after the date of the programme. The position was that the State, on the Application filed, had granted the permission after considering the case. The show/programme was conducted accordingly. However, abruptly the exemption was revoked. This action is against the basic principles of natural justice and even the settled law. The allegations of misrepresentation and/or fraud, if any, itself require due show cause notice with specific particulars and its details. There was no such communication prior in point of time.

15 The Collector, thereafter proceeded to recover the amount stated to be due on various undetailed data and material and the basic of amount so unilaterally calculated and for the first time reasons

reflected in the impugned judgment for the same. In the present case, the controversy, even if any, with regard to the exemption application so filed by the National Association for the Blind and not by the Petitioner (Conveyer/organiser) as the specific claim/case was about the general exemption so referred. There was no need of making such separate application for special exemption also.

16 The order/judgment passed by the Collector no-where dealt with the facet that the Petitioner/organiser failed to apply as per Rule 25 as sought to be contended by the learned AGP and, therefore, they have decided to take this action for revocation and the recovery. We have noted the reasons in the judgment that revolve around the Application filed by the Petitioner/National Association for Blind. The programme was actually conducted by the organiser/Petitioner. The Judgment is based upon the reasons of mis-direction and/or mis-representation. It is difficult for any organiser to recover such duty and the surcharge from any consumer/audience, once the tickets are sold, on the basis of exemption already granted. The duty/surcharge could not have charged by the Petitioners in view of the specific exemption under the law.

17 This is one of the case where, though it is a question of revenue, but if the provision of law is clear, no tax and/or revenue could have been collected by any Department, unless it is the requirement of the law. They were exempted from the liability under the Act. The demand so raised in such fashion, in our view, was unsustainable. Apart from that, the way in which the action was initiated and the demand so raised as recorded above is against the basic principles of natural justice and even the settled provisions of law.

18 We have also noted that, the Department, while initiating the recovery proceedings, gave reasons for the first time in the Judgment-why they have taken action against the Petitioners of revocation of the exemption so granted. There was no justification and reasons placed on record on the date of issuance of action of revocation. At the stage of recovery only, the department gave justification, without giving opportunity to the party concerned at the relevant time. This approach is also unsustainable. The Supreme Court in *Mohinder Singh Gill v. The Chief Election Commissioner, New*

Delhi,¹ has recorded in para 8 as under:

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in *Gordhandas Bhanji A.I.T.* .

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to effect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older :

A Caveat.”

19 This Court, after hearing both the parties on 26 February, 1996 itself, in Writ Petition by Respondent No.5(National Association for the Blind) after taking note of the background, granted the stay to the recovery proceedings so initiated by observing that “the Respondents are directed not to recover the amount on the basis of

1 AIR 1978 SC 851

impugned order”. Therefore, till this date, no recovery proceedings could be proceeded by the Respondents. The Division Bench, in support of above, has observed in para 7, as under :

“7 Prima facie, it appears that the Order passed by the State Government is illegal. Exemption was granted to the National Association for the Blind without any conditions. There were no restrictions imposed that the show was to be organised by the National Association for the Blind itself. Exemption was also granted by exercising the powers under section 6(3) and not under section 6(1) or 6(2). It is also admitted that the Show was organised on 26th April 1995 and thereafter, the impugned order dated 9th May 1995 was issued. If such orders are passed, after the Show is organised, it would cause irreparable loss to the Association to which exemption is granted.”

We are in agreement with above observations also, apart from the reasons in other paragraphs. The amount is with Respondent No.5, for the purpose for which the Show was conducted. No case to recover the said amount or demand such amount after Show is over.

20 Therefore, taking overall view of the matter, we are inclined to allow both the Writ Petitions, in the facts and circumstances of the case as recorded above, in terms of prayer (B) of Writ Petition No. 270 of 1996 quoted above and which cover both the cases.

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21 Rule made absolute accordingly in both the Petitions.

22 There shall be no order as to costs.

(A. S. GADKARI, J.)

(ANOOP V. MOHTA, J.)