

PETITIONER:
DARSHAN LAL MEHRA AND 23 OTHERS

Vs.

RESPONDENT:
UNION OF INDIA AND OTHERS

DATE OF JUDGMENT 04/08/1992

BENCH:
KULDIP SINGH (J)
BENCH:
KULDIP SINGH (J)
RAMASWAMY, K.

CITATION:
1992 AIR 1848 1992 SCR (3) 704
1992 SCC (4) 28 JT 1992 (4) 417
1992 SCALE (2) 113

ACT:
U.P. Nagar Mahapalika Adhiniyam, 1959-Sections 172, 2(77)-Theatre tax under Lucknow Nagar Mahapalika Theatre Tax Rules, 1965-Fixing rate of tax on the basis of annual rental value of cinemas-Whether arbitrary or violative of Article 14 of the Constitution of India, 1950.

HEADNOTE:

The proposal of the Nagar Mahapalika, Lucknow to levy theatre tax, @ Rs. 5 per cinema show held in a building assessed on annual rental value of Rs. 10,000 or more and @ Rs. 3 per cinema show held in a building assessed on annual rental value of less than Rs. 10,000 was accepted by the State Government by following the procedure laid-down under the U.P. Nagar Mahapalika Adhiniyam, 1959.

The Lucknow Nagar Mahapalika Theatre Tax Rules, 1965 were framed and enforced with effect from December 15, 1965 and the theatre tax was levied with effect from June 1, 1967.

The rate of tax was increased from time to time and finally by a notification dated October 30, 1979 the theatre tax was enhanced to Rs.25 per show on all class-I cinemas with annual rental value more than Rs. 10,000 and Rs. 20 per show on all class II cinemas with annual rental value of Rs. 10,000 or less.

The theatre tax imposed by Nagar Mahapalika, Allahabad was challenged before the High Court under Article 226 of the Constitution of India. A Single Judge of the High Court dismissed the writ petition. Appeal against the judgment of the Single Judge was dismissed by a Division Bench, which was reported as Niranjana Lal Bhargava Trust, Allahabad v. State of U.P. & others, (1972) All. L.J. 279.

Petitioner No.6 challenged the initial imposition of theatre tax by filing a civil suit in the court of Civil Judge, which was dismissed. A Single Judge of the High Court, following the judgment in Niranjana Lal Bhargava

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Trust case, dismissed the second appeal filed by him.

About 20 days after the dismissal of the regular second appeal by the High Court, the petitioners filed a Writ Petition No.3512/76 in the High Court challenging the imposition of theatre tax. The said petition is still

pending before the High Court.

The petitioners - the cinema owners/lessees in these Writ petitions under Article 32 of the Constitution of India challenged the imposition of theatre tax by the Respondent-Nagar Mahapalika, Lucknow, contending that Section 172(2) of the Act was unconstitutional because the legislature abdicate its function by delegating the essential legislative powers upon the Nagar palikas to levy all or any of the taxes enumerated in the Section; that the classification of cinemas on the basis of annual rental value for the purpose of fixing the rate of tax was arbitrary and as such was violative of Article 14 of the Constitution of India; and that the classification had no nexus with the objects sought to be achieved.

Dismissing the writ petitions of the cinema owners/lessees, this Court,

HELD : 1.01. The taxes under Section 172(2) of the U.P. Nagar Mahapalika Adhiniyam, 1959 can be levied by the Mahapalikas only for implementing those purposes and for no other purpose. The Mahapalikas have to provide special civic amenities at the places where cinemas/theatres are situated. So long as the tax has a reasonable relation to the purposes of the Act the same cannot be held to be arbitrary. The rate of tax to be levied and the persons or the class of persons liable to pay the same is determined by inviting objections, which are finally considered and decided by the State Government. [709 F-H]

1.02. The tax is levied in accordance with the statutory rules framed by the State Government and the said rules are laid before each House of the State Legislature for not less than 14 days and are subject to such modifications as the legislature may make during the session they are so laid. [710A]

Gopal Narain v. State of Uttar Pradesh and Anr., [1964] 4 S.C.R. 869 and The Western India Theatres Limited v. Municipal Corporation of the City of Poona, [1959] Supp. 2 S.C.R. 71, followed.

1.03. The annual rental value under the Act indicate the extent of the

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accommodation, its quality, the locality in which it is situated and other factors which relate to the enjoyment of the building. The theatre tax is levied as a tax on amusement and entertainment. The amusement in a building is affected by all those factors which are taken into consideration while fixing the annual rental value of the building. Higher rental value in relation to a cinema house shows that it has better accommodation, better situation and better facilities for amusement and entertainment. The higher annual value is indicative of a better quality cinema house, as compared to a cinema house, which has a lesser annual rental value. There is nothing unreasonable or improper in classifying the cinema houses on the basis of annual rental value. [710H-711B]

The Western Indian Theatres Ltd. v. The Cantonment Board, Poona Cantonment,, [1959] Supp (2) S.C. R. 63 followed.

Niranjan Lal Bhargave Trust, Allahabad v. State of U.P. and others, (1972) All L.J. 279, approved.

JUDGMENT:

ORIGINAL JURISDICTION : Writ Petition (Civil) Nos. 2426-2449 of 1980.

(Under Article 32 of the Constitution of India).

M.S. Ganesh for the petitioners.

Darshan Lal Misra, Ms. A. Subhashini, Ms. Shobha Dikshit and P.K. Pillai for the Respondents.

The Judgment of the Court was delivered by

KULDIP SINGH. J. The imposition of "theatre tax" by the Nagar Mahapalika, Lucknow has been challenged by the cinema owners/lessees in these petitions under Article 32 of the Constitution of India.

Section 172 and 2(77) of the U.P. Nagar Mahapalika Adhiniyam 1959 (the Act) are reproduced hereunder :

Section 172 : Taxes to be imposed under this Act.

(1) For the purposes of this Act and subject to the provisions thereof and of Article 285 of the Constitution of India, the Mahapalika shall impose the following taxes, namely :

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(a) property taxes,

(b)

(c)

(2) In addition to the taxes specified in sub-section (1), the Mahapalika may for the purposes of this Act and subject to the provisions thereof impose any of the following taxes, namely

(a) a tax on trades, callings and professions and holding of public or private appointments;

(b)

(c)

(d)

(d)

(e)

(f)

(g)

(h)

(i) a theatre tax; and

(j) any other tax which the State Legislature has the power under the Constitution of India to impose in the State.

(3) The mahapalika taxes shall be assessed and levied in accordance with the provisions of this Act and the Rules and bye-laws framed thereunder.

(4) Nothing in this section shall authorise the imposition of any tax which the State Legislature has no power to impose in the State under the Constitution of India.

Section 2 : In this Act unless there be something repugnant to the subject or context-

(77) "theatre tax" means a tax on amusement or entertainments.

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Sub-Section (1) of Section 199 of the Act requires the Nagar Mahapalika to make a preliminary proposal specifying the tax which it desires to impose under section 172(2) of the Act, the persons or class of persons to be made liable, the amount or rate levyable for each such person or class of persons and any other information which the Government requires. It further requires the executive committee of the Nagar Mahapalika to draft the rules in the respect which are finally to be framed by the State Government. The draft rules are published in the prescribed manner to enable the affected public to file objections. Section 200 of the Act makes it obligatory for the Nagar Mahapalika to consider the objections so received and to re-publish the draft rules in case any change is made therein as a result of such consideration. After considering all the objections the

draft rules are finalised by the Nagar Mahapalika and are forwarded to the State Government along with the objections. Section 201 of the Act empowers the State Government to reject, modify or to accept the proposed rules. Under Section 202 of the Act it is only after the rules are finalised by the State Government that the Nagar Mahapalika can pass a special resolution imposing the tax from the date to be specified. Under section 203 the special resolution is sent to the Government and the tax is imposed on the publication of the resolution in the Government gazette. Section 540(4) of the Act provides that all rules made under the Act shall be laid for not less than 14 days before each House of the State Legislature as soon as they are made and shall be subject to such modifications as the legislature may make during the session they are to laid.

The proposal of the Nagar Mahapalika, Lucknow to levy theatre tax, @ Rs.5 per cinema show held in a building assessed on annual rental value of Rs. 10,000 or more and @ Rs. 3 per cinema show held in a building assessed of annual rental value of less than Rs. 10,000, was accepted by the State Government by following the procedure laid-down under the act. The rules called The Lucknow Nagar Mahapalika Theatre Tax Rules were framed and enforced with effect from December 15, 1965 and thereafter the tax was levied with effect from June 1, 1967. The rate of tax was increased from time to time and finally by a notification dated October 30, 1979 published in the U.P. Government Gazette dated October 31, 1979 the theatre tax was enhanced to Rs. 25 per show on all class-I- Cinemas with annual rental value of more than Rs. 10,000 and Rs. 20 per show on all class II cinemas with annual rental value of Rs. 10,000 or less.

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At this stage we may notice the fact that the theatre tax imposed by Nagar Mahapalika Allahabad was challenged by the cinema exhibitors before the Allahabad High Court by way of a writ petition under Article 226 of the Constitution of India. The grounds of attack were substantially the same as before us in these petitions. A learned Single Judge of the High Court dismissed the writ petition. Appeal against the judgment of the learned Single Judge was dismissed by a Division Bench consisting of R.S. Pathak and H. Swarup, JJ. The judgment rendered by the Division Bench of the High Court is reported as Niranjana Lal Bhargava Trust, Allahabad v. State of U.P. & others, (1972) All L.J. 279.

Gulu Thadani, petitioner No.6 before us challenged the initial imposition of theatre tax by filing a civil suit in the court of Civil Judge, Lucknow which was dismissed. He contested the suit up to the High Court. A learned Single Judge of the High Court, following the judgment in Niranjana Lal Bhargava Trust case, dismissed the second appeal filed by Gulu Thadani on November 27, 1976. On December 17, 1976, about 20 days after the dismissal of the regular second appeal by the High Court, the petitioners before us filed a writ petition No.3512/76 in the Allahabad High Court (Lucknow Bench) challenging the imposition of theatre tax on various grounds. The said petition is still pending before the High Court.

The learned counsel for the petitioners has contended that Section 172(2) of the Act is unconstitutional because the legislature has abdicated its function by delegating the essential legislative powers upon the Nagar Palikas to levy all or any of the taxes enumerated in the Section. According to him the said power is unguided and uncanalised. We do not agree with the learned counsel. Section 172(2) of the Act authorises the Mahapalikas to impose the taxes mentioned

therein, "for the purposes of this Act". The obligations and functions cast upon the Mahapalikas are laid down in various provisions of the Act. The taxes under Section 172(2) of the Act, therefore, can be levied by the Mahapalikas only for implementing those purposes and for no other purpose. The Mahapalikas have to provide special civic amenities at the places where cinemas/theatres are situated. So long as the tax has a reasonable relation to the purposes of the Act the same cannot be held to be arbitrary. The rate of tax to be levied and the persons or the class of persons liable to pay the same is determined by inviting objections which are finally considered and decided by the State Government. There is no force in the argument that the legislature has

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abdicated its function to the Mahapalikas. The tax is levied in accordance with the statutory rules framed by the State Government and the said rules are laid before each House of the State Legislature for not less than 14 days and are subject to such modifications as the legislature may make during the session they are so laid. The view we have taken, we are supported by the judgments of this Court, in *Gopal Narain v. State of Uttar Pradesh and Anr.*, [1964] 4 S.C.R. 869 and *The Western India Theatres Limited v. Municipal Corporation of the city of Poona*, [1959] Supp. 2 S.C.R. 71. We, therefore, reject the contention raised by the learned counsel for the petitioners.

The second contention raised by the learned counsel for the petitioner is that the classification of cinemas on the basis of annual rental value for the purpose of fixing the rate of tax is arbitrary and as such is violative of Article 14 of the Constitution of India. According to him the classification has no nexus with the objects sought to be achieved. We do not agree. In *The Western India Theatres Ltd. v. The Cantonment Board, Poona, Cantonment*, [1959] Supp 2 S.C.R. 63 the Cantonment Board, Poona imposed entertainment tax on cinemas. Rs. 10 per show was levied on the two cinemas of Western India Theatres Ltd. and Rs. 5 per show in other cases. The argument raised before this court to the effect that the Cantonment Board had singled-out the two cinema houses for discriminatory treatment by imposing higher rate of tax, was answered as under :

"It may not be unreasonable or improper if a higher tax is imposed on the show given by a cinema house which contains large seating accommodation and is situate in fashionable or busy localities where the number of visitors is more numerous and in more affluent circumstances than the tax that may be imposed on shows given in a smaller cinema house containing less accommodation and situate in some localities where the visitors are less numerous or financially in less affluent circumstances, for the two cannot, in those circumstances, be said to be similarly situate".

The annual rental value under the Act indicate the extent of the accommodation, its quality, the locality in which it is situated and other factors which relate to the enjoyment of the building. The theatre tax is

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levied as a tax on amusement and entertainment. The amusement in a building is affected by all those factors which are taken into consideration while fixing the annual rental value of the building. Higher rental value in relation to a cinema house shows that it has better accommodation, better situation and better facilities for amusement and entertainment. The higher annual value is

indicative of a better quality cinema house as compared to a cinema house which has a lesser annual rental value. We are, therefore, of the view that there is nothing unreasonable or improper in classifying the cinema houses on the basis of annual rental value. The learned counsel for the petitioners has not raised any other point before us.

The writ petitions are dismissed with costs. We quantify the costs as Rs. 1000 to be paid by each petitioner.

Petitions dismissed.

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