PETITIONER:
GEETA ENTERPRISES AND OTHERS

Vs.

RESPONDENT:
STATE OF U.P. AND OTHERS

DATE OF JUDGMENT05/09/1983

BENCH:
FAZALALI, SYED MURTAZA
BENCH:
FAZALALI, SYED MURTAZA
VARADARAJAN, A. (J)
THAKKAR, M.P. (J)

CITATION:
1983 AIR 1098 1983 SCR (3) 812
1983 SCC (4) 202 1983 SCALE (2)275

ACT:
Uttar Pradesh Entertainment and Betting Tax Act, 1937-Sec. 2(3- Definition of Entertainment-Extremely wide-Video shows fall in the ambit of s. 2(3) and are exigible to entertainment tax under sec. 3. When a show would be entertainment-Test laid down. .
Words and phrases- 'Entertainment',

HEADNOTE:
The petitioners opened video parlour by installing electronic machine with video screen and permitted persons to enter the premises without any charge to view a show on the video which consisted mainly of sports, games etc. played on the screen of the video. The show lasting upto 30 seconds was operated by inserting SO paise coin into the video machine by an operator from the audience who wanted to operate the video machine. While one High Court was of the view that-the video games were included in the definition of entertainment and were liable to entertainment tax, two other High Courts were of the opposite view. The petitioners filed the present writ petitions contending that in view of the manner in which the video games were shown and also in view of the fact that these games, sports etc. involved a great amount of skill for the operator, the video games would not be an entertainment within the meaning of sub-sec, (3) of sec. 2.
Dismissing the petitions,
^
HELD: The video show is an entertainment under soc. 2(1) and therefore exigible to tax under sec. 3. [821 A-B]
A perusal of the various shades, aspects, forms and implications of the word 'entertainment as defined in different books and dictionaries clearly leads to an irresistible inference that the word 'entertainment' has been used in a very wide sense so as to include within its ambit, entertainment of any kind including one which may be purely educative. Sub-sec. (3) of sec. 2 itself by using the word 'entertainment as "any exhibitional, performance, amusement, game or sport to which persons are admitted for payment" has extended the scope of entertainment to expressly include any kind of amusement, game or sport. When

a number of people without any admission fee enter a hall for entertainment and enjoy the games it becomes a public show and the hall where the video is played becomes a public hall and amounts therefore to a
813
public exhibition which is squarely covered by the first limb (exhibitional) of the definition of entertainment in sub-sec. (3) of sec. 2. [817 A-B, E-E]

Porritts & Spencer (Asia) Ltd. v. State of Haryana, [1979] 1 S.C.R. 545; Stroud's Judicial Dictionary (4th Edn; vol. 2. p. 916); Words and Phrases, judicially Defined (vol. 2, p. 206.207); Words and Phrases (Permanent Edn; vol. 14A, p. 353); Reader's Digest Family Word Finder at p. 264; Webster's Third New International Dictionary; and Concise English Dictionary by Hayward and Sparkes, referred to.

In the present case by operating the video, the operator of the video pays 50 paise per 30 seconds for playing the games, sports and other kind of performances which are shown on the machine and which can be watched by interested spectators. The circumstances that no admission fee is charged from viewers seeing the video by itself, however, cannot defuse or alter the kind of entertainment deprived by the person who pays for playing the games. The operator of video would deprive pleasure and be entertained regardless of whether the possesses skill or not. If he possesses skill he may derive more pleasure on less payment otherwise he will have to pay but he will derive pleasure all the same. That he would not pay money if it did not thrill, amuse, and entertain him, is obvious. Besides, the game brings a substantial return for the person who makes available these facilities. [817 C-E, G-H]

Gopal Krishna Agarwal v. State of Uttar Pradesh & ors., All L J, 1982 page 607 approved.

Harris Wilson v. State of Madhya Pradesh & ors., A.T.R. 1982 M.P. at page 171 and H. T. Gursahaney v. State & Anr., 1982 (2)-vol. XIII (2), CLR 526 overruled.

JUDGMENT:

ORIGINAL JURISDICTION : Writ Petition Nos. 1731, 1915, 2277, 3691, 7097, 9428/81 and 2121, 7430, 7431, 8349, 9319 of 1982.

(Under article 32 of the Constitution of India)

K. C. Dua, for the Petitioners.

B. P. Maheshwari, for the Respondent.

The Judgment of the Court was delivered by

FAZAL ALI, J. What appears to be a short and simple point has been the subject matter of a serious divergence of judicial opinion between two leading High Courts of our country, namely the Allahabad High Court and Madhya Pradesh High Court taking contrary views which have to be resolved by us in the present writ
814
petitions.. The short point involved in these petitions turns upon the interpretation of the word "Entertainment" as used in section 2(3) of the Uttar Pradesh entertainment and Betting Tax Act, 1937 (hereinafter to be referred to as the 'Act').

The facts of these cases lie within a very narrow compass and may be stated thus:-

The first petitioner is a partnership firm which had launched an entertaining and ingenious enterprise for the running of a Video Parlour at 3, Chauhan Market, Delhi gate, Agra. The modus operandi of the petitioner was as follows. A

machine with a video screen is installed in the parlour of the petitioner. The petitioner permits persons to enter the premises without any charge to view a show on the video which consisted mainly of sports games etc. played On the screen of the video. According to the petitioner he did not Charge any admission fee but the Electronic Machines imported from Japan having educational value for persons playing the games were meant to provide educational entertainment by showing sea warfare, battle field space warfare sports and many other things which were likely to provide both education and entertainment to the viewers, particularly to young children. The mechanism for playing the machine was so designed that a coin of 50 naya paise was to be inserted into a strong box built within the machine, the keys of which were with the manufacturer. After the show was over a representative of the manufacturing company would come, open the box, collect the money and pay the share of the hirer-petitioner out of the collected sale proceeds. It was further alleged that no admission or gate entry fee was charged for entering the House or Parlour to watch or play the game or for entering into the adjacent snack shops. The shows were operated by an operator from the audience and SO paise coin was inserted into the aforesaid box before the show could start. The charge of inserting the coin was realised only from those who wanted to operate the video machine at the rate of SO paise for a show lasting up to 30 seconds.

The petitioners thus contended that the manner in which the game was shown to the viewers and operated by the person playing the games was not an entertainment within the meaning of section 2 (3) of the Act. To Buttress this argument the petitioners cited the example of several States where identical shows were not exigible to entertainment tax. It is manifest that the manner and the mechanism
815
by which the operation of the video was done would be eligible to tax could not be determined merely because some other States did not choose to charge any entertainment tax for the video shows.

The crux of the matter is as to whether or not the show, the details of which have been described above falls within the four corners of the expression "entertainment". Sub-section 3 of section 2 of the Act may be extracted thus:-

> "entertainment" includes any exhibitional, performance, amusement, game or short to which persons are admitted for Payment."

It is true that a part of the video show was of some educational value but that by itself would be no answer to the application of Sub-section 3. The definition as extracted above is extremely wide so as to take within its fold and includes the kind of show which was displayed by the petitioners in this case.

Before explaining the section we would like to ascertain the correct meaning and import of the word 'entertainment' (which is neither a scientific nor a technical term) as used in the popular sense or as understood in common parlance. This was held by this Court in the case of Porritts and Spencer (Asia) Ltd v. State of Haryana.(1) In Stroud's Judicial Dictionary (4th Edn, vol. 2. p. 916) the word 'entertainment' has been defined thus:

> "Entertainment ... for a PUBLIC OR SPECIAL occasion"... is an entertainment in the sense of a gathering of persons for entertainment."
>
> "Entertainment" (Small Lotteries and Gaming

Act 1956 (c. 45, s. 4 (1) included a tombola drive alone with out accompanying festivities.

"The monologue or patter of a comedian, even if delivered at an entertainment provided by an institution whose activities are partly educational, was held to be a "variety entertainment" within the meaning of the Section."

816

Similarly in words and Phrases, Judicially Defined (vol. 2, p. 206-207) the word entertainment has been defined thus :-

"Entertainment is something connected with the enjoyment of refreshment-rooms, tables, and the like. lt is something beyond refreshment; it is the accommodation provided, whether that includes a musical or other amusement or not".

Similarly in Words and Phrases (Permanent Edn; Vol. 14A, p. 353) 'entertainment' has been defined thus:-

"An entertainment is a source or means of amusement; a diverting performance, especially a public performance, as a concert, drama, or the like."

"Entertainment" denotes that which selves for amusement, and "amusement" is defined as a pleasure able occupation of the senses, or that which furnishes it, as dancing, sports, or music."

Likewise in Reader's Digest Family Word Finder at p-263. 'entertainment' has been defined thus:

"Entertainment amusement, diversion, distraction, recreation, fun, play, good time, pastime, novelty; pleasure, enjoyment, satisfaction."

In Webster's Third New International Dictionary the word 'entertainment' has been defined at p. 757 thus:-

"entertainment - the act of diverting, amusing, or causing someone's time to pass agreeably.

"Something that diverts, amuses, or occupies the attention agreeably.

A public performance designed to divert or amuse.

Similarly in the Concise English Dictionary by Hayward and Sparkes the word entertainment' has been defined thus:-

"the art of entertaining, amusing or diverting, the pleasure afforded to the mind by anything interesting, amusement, other performance intended to amuse."

817

A perusal of the various shades, aspects, forms and implications of the word 'entertainment' as defined in the aforesaid books clearly leads to an irresistible inference that the word 'entertainment' has been used in a very wide sense so as to include within its ambit, 'entertainment of any kind including one which may be purely educative. Sub-section 3 itself by using the word 'entertainment' as "any exhibitional, performance, amusement, game or sport to which persons are admitted for payment" has extended the scope of entertainment to expressly include any kind of amusement, game or sport. It cannot be disputed in the present case that by operating the video, By the operator of the video pays SO paise per 30 seconds for playing the games, sports and other kind of performances which are shown on the machine and which can be watched by interested spectators. It was vehemently argued by the Codasel for the petitioners that no admission fee is charged from viewers seeing the video. That circumstances by itself, however, cannot defuse or alter the kind of entertainment derived by the person who pays for playing the games. That he would not pay money if

it did not thrill, amuse, and entertain him, is obvious. Translated into actual practice, if the operators who are from the audience play the video for one hour the amount of money collected would be Rs. 60 and if the video is played for 3-4 hours a day, the total amount comes to Rs. 180-240 per day which is doubtless a substantial amount for showing the video by way of an entertainment because when a number of people without any admission fee enter a hall for entertainment and enjoy the games it becomes a public show and the hall where the video is played becomes a public hall and amounts therefore to a public exhibition which is squarely covered by the first limb (exhibitional) of the definition of entertainment in Sub-section 3 extracted above.

It was next argued that to play these games, sports etc. involves a great amount of skill for the operator and therefore it would not be an entertainment within the meaning of Sub-section 3. This argument appears to be without any substance because he would drive pleasure and be entertained regardless of whether he possesses skill or not. If he possesses skill he may derive more pleasure on less payment otherwise he will have to pay but he will derive pleasure all the same. Besides, the game brings a substantial return for the person who makes available these facilities. In these circumstances it is impossible for us to hold that such an exhibition falls beyond the purview of the word entertainment as envisaged in sub-section 3.

818

Furthermore, clauses regarding payment for admission includes:- .

"Any payment for a programme or synopsis of an entertainment."

"Any payment for any purpose whatsoever connected with an entertainment which a person is required to make as a condition of attending or continuing to attend the entertainment in addition to the payment, if any, for admission to the entertainment."

Section 3 which is the charging section runs thus:-

"There shall be levied and paid on all payments for admission to any entertainment a tax (hereinafter referred to as entertainment tax)."

Section 3 of tho Act which has been extracted above, clearly applies to the facts of this case because here the payment is based on lump sum basis calculated at the rate of SO paise per 30 seconds.

Thus, on a consideration of the legal connotation of the word 'entertainment as defined in various books, and other circumstances of the case as also on a true interpretation of the word as defined in s. 2 (3) of the Act, it follows that the show must pass the following tests to fall within the ambit of the aforesaid section:

1. that the show, performance, game or sport, etc. must contain a public colour in that the show should be open to public in a hall, theatre or any other place where members of the public are invited or attend the show.
2. that the show may provide any kind of amusement whether sport, game or even a performance which requires some amount of skill.

In some of the cases, it has been held that even holding of a tombola in a club hall amounts to entertainment although the playing

of tombola does, to some extent, involves a little skill.

819

3. that even if admission to the hall may be free but if the exhibitor derives some benefit in terms of money it would be deemed to be an entertainment.

4. that the duration of the show or the identity of the person who operates the machine and derives pleasure or entertained or that the operator who pays him self feels entertainment is wholly irrelevant in judging the actual meaning of the word 'entertainment' as used in s. 2 (3) of the Act. So also the fact that the income derived from the show is shared by one or more persons who run the show.

The Allahabad High Court in the case of Gopal Krishna Agarwal, v. State of Uttar Pradesh and Ors(1) which was also a case under the Act, held that entertainment tax was leviable on video games. The High Court has very carefully analysed sub-section 3 of s. 2 of the Act and the import of the word 'entertainment' and observes as follows:-

"The context in which the word 'includes, has been used in the definition clauses of the Act does not indicate that the Legislature intended to put a restriction or a limitation on words like 'entertainment' or 'admission to an entertainment' or 'payment for admission'. With the advance of civilization and scientific developments new forms of entertainment have come into existence. Video Games are probably the latest additions to the means of entertainment. These games require skill and precision as so many other games do. They are a source of amusement and enjoyment to those who participate in the games. Others who stand by and watch also derive some pleasure and amusement though not to the same degree. Admission to the premises where the Video Machines are installed may be free but payment is admittedly made if one wants to play the game. The money charged for use of the Video Machine is an admission to entertainment and the payment made by the person who uses the Machine is the payment for admission. In any case it is a payment for admission. In any case it is a payment

820

connected with entertainment which a person is required to make as a condition of attending the entertainment

We find ourselves in entire agreement with the observations of the Court and fully approve of the ratio decendi of this case . The Allahabad High Court has given almost the same reasons as given by us in the earlier part of the judgment.

It is true that in the case of Harrish Wilson v. State of Madhya Pradesh and Ors.(1) the Madhya Pradesh High Court had taken a contrary view and held as follows:-

"Therefore, what entertains a person in the video games parlour is his own performance and not the exhibition, performance, amusement, game or any sport offered by the petitioners. The payment made by a person to another to provide him with tools for deriving pleasure from his own performance with the help of the tools can not be

held to be payment to that another for 'admission to entertainment' as contemplated by the Act. In our opinion, therefore, it cannot be held that the petitioners receive 'payment for admission to entertainment', when they collect amounts inserted by the persons in the slot."

And the Gujarat High Court in N. T. Gursahaney v. State and Anr.(2) has taken a similar view. Apart from the wrong line of reasoning adopted by the Madhya Pradesh High Court it seems to have completely overlooked certain important aspects of the question which we have dealt with in our judgment. Moreover even the language of the charging provision of the Act which fell for interpretation in that case does not appear to be absolutely in pari-materia with the language of the various sections of the U. P. Act. Even so the pivotal conclusions derived by the Madhya Pradesh High Court and the Gujarat High Court do not appeal to us. The mere fact that payment is not made at the time of entering the premises is irrelevant. Payment made at a later, stage by inserting a coin is nonetheless for being admitted to a place of entertainment. Thus the fee being charged in a different manner at a different stage is in any case for providing entertainment. We, therefore, with due respect to the High Courts, disapprove their decisions.
821

For the reasons given above we hold that the decision of the Allahabad High Court is correct and we hereby over rule the decisions of the Gujarat and Madhya Pradesh High Courts. In our opinion, the video show in the instant case is clearly exigible to tax under section 3 of the Act. The Writ petitions are accordingly dismissed with no order as to costs.

H.S.K. Petitions dismissed.
822