

A

STATE OF MADHYA PRADESH AND ORS.

v.

HOME DECORATORS AND FINANCE (PVT.) LTD. AND ANR.

MAY 3, 1990

B

[B.C. RAY, A.M. AHMADI AND P.B. SAWANT, JJ.]

C *The (Madhya Pradesh) Entertainments Duty (And Advertisement Tax) Act, 1936. Organisation of entertainment programmes under an ostensible savings scheme—Entry open to members of scheme on payment of non-refundable admission fee of Rs.2 and refundable membership subscription of Rs. 10—Membership cards and money receipts collected from the persons at the time of entry to programme—No performances staged for members in future—Held issue of cards amounted to sale of tickets and hence liable to entertainment duty.*

D

The respondents organised two music programmes by formulating an ostensible savings scheme under which the entry to the programme was open to persons on becoming members of the scheme by paying an admission fee of Rs.2, non-refundable, and membership subscription of Rs.10, refundable after 10 years. The entry to the programme was strictly on the production of invitation card as well as membership card. Many persons paid the admission fee and the membership subscription. At the time of giving entry to the programme, the respondents collected the membership forms and money receipts from the persons concerned as a result of which they were left neither with membership form nor with the money-receipts. Although the promise was that such programmes would be repeated for 10 years yet no such performances were arranged. The result was that members of the public were defrauded of their money and the State Government of its tax-revenue.

E

F

The Entertainment Tax Collector checked the receipts of the respondent on both the dates of performances and accordingly issued notices to them demanding the tax and the duty-surcharge thereon under the Madhya Pradesh Entertainments Duty and Advertisement Tax Act, 1936.

G

The respondents challenged the validity of the notices by filing a writ petition in the High Court which allowed the petition and quashed the notices by holding that the assessment of tax was arbitrary because

H

(i) there was no allegation that the invitation cards were sold; and (ii)

membership subscription of Rs.10 was not divided by 10 since the entertainment tax could be collected only on Re.1 per year for the next 10 years. Hence this appeal by the State.

Allowing the appeal and setting aside the decision of the High Court, this Court,

HELD: The Scheme was not meant for promoting music. It was a pure business-proposition meant to collect money and earn profits, and it was to be used as a device to evade the entertainment duty. The receipts and the invitation cards were nothing but tickets for the show and only for one show, and were collected at the door. Therefore, whatever be the description given to the receipts or cards they were liable to the entertainment duty. The impugned notices were properly issued by the appellants. Since the High Court completely missed the crucial point and, therefore, mis-directed itself, it is not possible to accept its reasoning that Rs.10 collected by the respondents were the membership subscription or that the duty could not have been collected at a time on Rs.10. [1005E-F; 1003D]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1416 of 1975.

From the Judgment and Order dated 2.12.1974 of the Madhya Pradesh High Court in M.P. No. 565 of 1974.

Sakesh Kumar and S.K. Agnihotri for the Appellants.

S.S. Khanduja, Y.P. Dhingra and B.K. Satija for the Respondents.

The Judgment of the Court was delivered by

SAWANT, J. This is an instance of how a resourceful mind can find ingenious method to circumvent the law. The first respondent in this case is the Home Decorators & Finance (P) Ltd. of which the second respondent is the Managing Director. The appellant-Government collects entertainment tax under the Entertainment Duty and Advertisement Tax Act, 1936 (hereinafter referred to as the 'Act') from the organisers of the entertainment-programmes whenever the entries to such programmes are charged. The entertainment tax is recovered at the rate of 36 per cent of the fee charged. In order to evade this tax, the respondents evolved a stratagem and organised two

- A performances called "Mahendar Kapoor Nite" in a local auditorium, namely, Manas Bhawan Hall Wright Town Jabalpur, on 7th and 8th July, 1974. Although the Articles and the Memorandum of Association of the Ist Respondent did not permit them to do so, with a view both to bring the said programmes within the scope of the Articles of Association and to evade the payment of the tax, the respondents
- B issued advertisements of the programmes in a local newspaper giving out that the programmes were being arranged to encourage savings. The scheme was that all those who wanted to attend the programme will become members of a group which they called "Nav Nirman Group" by paying an admission fee of Rs.2 which was non-refundable and a membership subscription of Rs.10 which was refundable after 10
- C years. The advertisements also stated that since there was an overwhelming demand, the performance would be staged on two dates, namely, the 7th and 8th July, 1974 and that the membership forms would be available at the site on the dates concerned and that the entry to the programme would be strictly on the production of the invitation card as well as the membership card. It appears that on July 7, 1974
- D and July 8, 1974, as many as 3189 and 4649 gullible persons respectively fell victims, and paid both the admission fee as well as the membership subscription. The respondents collected both the membership forms as well as the receipts for payment from the said persons at the time of giving them the entry to the programme. The result was that the persons concerned were left neither with the membership
- E form nor with the receipts for the money they had paid.

2. Needless to say that although the promise was that such performances would be repeated for 10 years hence, and the members concerned would have an entry to the programmes on the basis of the membership cards, neither the membership cards were issued, nor the admission fee or the membership subscription were returned to the

F members, nor the performances were staged. In effect, the respondents made good with the money they had collected ostensibly for promoting savings. Thus both the members of the public were defrauded of their moneys as well the State Government of their tax-revenue.

G 3. The District Excise Officer who was also the Entertainment Tax Collector under the said Act, sensing the ploy had, however, taken precaution to check, on both the said dates, the receipts and the amounts received by the respondents and had dexteriously prepared a panchnama at the spot. He determined the amount of tax recoverable

H on the said collections, and issued to the respondents two separate

notices on July 9, 1974 demanding the tax along with the duty-surcharge thereon for the collections made on 7th and 8th July, 1974 respectively. The total amount so demanded by both the notices was Rs.35,429.76.

4. The respondents challenged the notices by a writ petition under Article 226 of the Constitution before the High Court. The High Court by the impugned decision held that the assessment of the tax made by the Officer was arbitrary because, firstly, there was no allegation that the invitation cards which were issued were sold, and secondly, the subscription fee of Rs.10 recovered from each member was not divided by 10 which it was necessary to do, for the entertainment tax could be collected only on Re.1 per year for the next 10 years. The High Court, therefore, allowed the writ petition and quashed the notices. It also appears that the respondents had paid Rs.5,000 in part payment of the amount demanded under the notices. The High Court, therefore, also directed the appellants to refund the said amount as being "exactd" from the respondents.

5. We are afraid, the High Court completely missed the crucial point and, therefore, mis-directed itself. The admitted facts as stated above were that the respondents had collected in all Rs.12 from each of the members out of which Rs.2 were non-refundable being the so called admission fee and Rs.10 were refundable only after 10 years. The "members" were not issued the membership-cards nor were they left either with any trace of their membership forms or receipts for the payments they had made. Instead they were handed over entrance slips during interval which were collected at the door. The result was that even if the "members" were to claim an entry for programmes, if any in future, they would not have been able to do so. As it happened further, in fact, no programmes were ever staged at any time thereafter. The so called 'Nav Nirman Group' did not have any legal existence. It was an amorphous body. The rules and regulations framed for the said body further showed some interesting features as follows:

"For the purpose of Prizes there shall be Five Sub-groups of one lakh members each. After every Sub-group of one lakh members there shall be total 4280 prizes divided into 20 half-yearly draws and valuing total amount of Rs.5 lakhs. The date of the First Draw will be announced through Newspapers.

Every member, irrespective of whether he has received any

A prize(s) or not shall be entitled to the refund of his deposit of Rs.10 after the maturity of the duration of the group, i.e., 10 years, along with a bonus of Rs.2 on surrender of the official Receipt-cum-Membership Evidence issued by the Company. Duration of the Group shall be commenced from the date of the Ist Draw.

B x x x x x x

For the purposes of Bumper Draw there shall be 50 Sub-Groups of 10,000 continued members each and after every such sub-group there shall carry various valuable prizes to the tune of about Rs.2,50,000. Members of incomplete sub-group of 10,000 continued members shall be given an extra bonus of Rs.25 in the shape of articles, the list of which shall be declared nearing maturity of the Group, instead of participating in Bumper Draw.

C x x x x x x

D Every member will be issued a receipt while being admitted as a member and the number of such receipt shall be his membership Number also. No separate pass book will be issued. The receipt itself shall be treated as final and conclusive evidence of membership.

E x x x x x x

F After the completion of Ist sub-group one lakh members the First Draw shall be conducted, but in case total membership of the sub-group does not attain the target necessary to form the sub-group before date of the draw (which shall be announced through Newspapers) then the remaining membership number of the sub-group shall be treated as the Company's membership numbers and any prize/benefit accruing through these numbers as a result of the draw shall remain the Company's property. The Company may allot such membership numbers subsequently to the new applicants for the remaining period with the subsequent benefits only. The same rule shall apply to every further sub-group of one lakh members.

G x x x x x x

H

Membership of the Group for 10 years and cannot be cancelled or withdrawn by the member before maturity of the Group. Prizes and Film Star show are added incentive and not Part of the Scheme and are not binding on the Company under circumstance-beyond control. A

x x x x x x B

The management may change any article of the declared prize looking to the time and circumstances prevailing at the time of the particular draw.

x x x x x x C

The management of the Company reserves the right to add, alter, or amend the rules and regulations as and when necessary for the efficient and proper conduct of the group as well as in compliance with the Government rules and regulations which may come in force hereafter and the same shall be binding on all the members." D

It will be apparent from the Scheme that it was not meant for promoting music. It was a pure business-proposition meant to collect money and earn profits, and it was to be used as a device to evade the entertainment duty. The receipts and/or the invitation cards were nothing but tickets for the show and only for one show, and were collected at the door. In the circumstances, whatever be the description given to the receipts/cards they were liable to the entertainment duty. The impugned notices were, therefore, properly issued by the appellants. We are, therefore, unable to accept the reasoning of the High Court that Rs.10 collected by the respondents were the membership subscription or that the duty could not have been collected at a time on Rs.10. E

6. Hence, we allow the appeal and set aside the impugned decision with costs. F

T.N.A.

Appeal allowed. G