

A

STATE OF KARNATAKA AND ORS.

v.

DRIVE-IN-ENTERPRISES

MARCH 13, 2001

B

[V.N. KHARE AND RUMA PAL, JJ.]

*Karnataka Entertainment Tax Act : Section 2(i)(v).*

C

*Entertainment Tax—On admission of cars/motor vehicles inside Drive-in-Theatre—Levy of—High Court struck down the provision as unconstitutional—Correctness of—Held : The levy of entertainment tax is on the person entertained and not on the cars/motor vehicles—However, State Legislature competent to levy entertainment tax under Entry 62, List II on admission of cars/motor vehicles inside Drive-in-Theatre since the person entertained sits in his car and views the film—Constitution of India, 1950, Entry 62, List II, VII Sch.—Karnataka Cinemas (Regulation) Rules, 1971, R. 111-A—Karnataka Cinemas (Regulation) Act, 1964, Reg. 22.*

D

*Doctrines :*

*Doctrine of Pith and Substance—Meaning and applicability of.*

E

*Words and Phrases :*

*“Entertainment”—Meaning of—In the context of S. 2(e) of the Karnataka Entertainment Tax Act.*

F

The respondent was the owner of a Drive-in-Theatre into which admissions were given to persons desiring to view cinema while sitting in their motorcars taken inside the theatre. The appellant-State levied entertainment tax under Section 2(i)(v) of the Karnataka Entertainment Tax Act on admission of cars inside the theatre. The High Court held that the levy was not on a person entertained (i.e. car/motor vehicles), the same was *ultra vires* and struck down Section 2(i)(v) of the Act as being beyond the legislative competence of the State Legislature. Hence this appeal.

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On behalf of the appellant-State it was contended that in pith and substance, the levy was on the person entertained and not on the admission of cars/motor vehicles inside the Drive-in-Theatre and therefore, the State

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Legislature was fully competent to impose such a levy. A

Allowing the appeal, the Court

HELD : 1. 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, 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. [383-D-E] B C

*Goodyear India Ltd. v. State of Haryana*, [1990] 2 SCC 71, *R.R. Engineering Co. v. Zila Parishad, Bareilly*, [1980] 3 SCC 330; *Kerala State Electricity Board v. Indian Aluminium Co.*, [1976] 1 SCC 466; *Raza Buland Sugar Co. v. Rampur Municipality*, AIR (1962) All. 82 and *Governor General-in-Council v. Province of Madras*, AIR (1945) PC 98, referred to. D

2.1. Entry 62 of List II of the Seventh Schedule of the Constitution 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. [386-H; 387-A] E F

2.2. Section 3 of the Karnataka Entertainment Tax Act, which is the 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 inside his car inside the auditorium views the film G H

A exhibited therein. This shows that the person entertained is admitted inside  
the Drive-in-Theatre along with the car/motor vehicle. This further show  
that the person entertained carries his car inside the Drive-in-Theatre in  
order to have better quality of entertainment. The quality of entertainment  
B 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  
C person sitting in his car or motor vehicle has the 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 entertain-  
ment 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  
D is on the person entertained who takes the car inside the theatre and watches  
the film while sitting in his car. Therefore, in pith and substance the levy is  
on the person who is entertained. Whatever be the nomenclature of levy, in  
substance, the levy under the heading "admission of vehicle" is a levy on  
entertainment and not on admission of vehicle inside the Drive-in-Theatre.  
So 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  
E imposed. The word "entertainment" is wide enough to comprehend in it, the  
luxury and comfort with which a person entertains himself. Once it is found  
that there is nexus between the legislature competence and subject of  
taxation, the levy is justified and valid. [387-B-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4319 of 1991.

F From the Judgment and Order dated 7.11.90 of the Karnataka High  
Court in W.P. No. 1624 of 1985.

M. Vecrappa for the Appellants.

B.P. Gandhi, K.N. Nagpal and Anil Kumar Sangal for the Respondent.

G The Judgment of the Court was delivered by

H V.N. KHARE, 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

A 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  
B 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.

C 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.  
D It was also urged that the State Legislature is fully competent to impose such  
a levy.

E 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  
F 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  
G 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.

H On the arguments of learned counsel for the 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.

Whereas 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

A 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 man's 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'."

B (emphasis supplied)

In *Kerala State Electricity Board v. Indian Aluminium Co.*, [1976] 1 SCC p.466, it was held thus:

C "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."

D In *Governor General in Council v. 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 :

E "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."

F 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:

G "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  
H 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.”

(emphasis supplied)

In *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 aforesaid 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 Section 2 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

A higher tax is required.

(ii) xxx xxx

(iii) xxx xxx

B (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)

C 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 entertainment 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 entertainment 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."

G Entry 62 of List II of Seventh Schedule empowers the State Legislature  
H 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

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A 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.

B 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.

C 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.

V.S.S.

Appeal allowed.