

OM PRAKASH PURI AND ANR.
v.
STATE OF WEST BENGAL AND ORS.

FEBRUARY 16, 1991

[K.N. SAIKIA AND MADAN MOHAN PUNCHHI, JJ.]

Constitution of India, 1950: Article 14—Sections 3 and 4 of the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972—Whether discriminatory and violative of.

West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972: Sections 3 and 4—Constitutional validity of.

Under the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972 as amended in 1974, the appellants were called upon to make *ad-hoc* payment of luxury tax calculated at Rs.2,40,000. A representation from the Hotel Association to the Respondents having been turned down, the appellants filed Writ Petition before the High Court, challenging the constitutional validity of the Act.

The Writ Petition was dismissed by a Single Judge. On appeal, the Division Bench declined to interfere holding that there was no discrimination, and thus there was no violation of Article 14 of the Constitution. Aggrieved, the appellants preferred the present appeal.

Dismissing the appeal, this Court,

HELD: 1. The Luxury Tax charged under Section 4 of the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972, is not discriminatory and is constitutionally valid for the reasons stated in the judgment of this Court in a similar matter wherein the same contentions were urged. [467E-F]

M/s. Spences Hotel Pvt. Ltd. & Anr. v. State of West Bengal and Ors., [1991] 1 SCR applied.

2. Whatever has been stated by this Court in relation to Section 4 of the Act would be equally applicable to Section 3 of the Act. [467F]

East India Hotels Ltd. v. State of West Bengal, AIR 1990 SC 2029, relied on.

A **CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4 of 1977.**

From the Judgment and Order dated 3/4.3.1975 of the Calcutta High Court in Appeal No. 156 of 1974.

B G.L. Sanghi, Dhruv Mehta, Aman Vachhar and S.K. Mehta for the Appellants.

Tapas Ray and G.S. Chatterjee for the Respondents.

C Harish N. Salve, Lalit Bhasin, Ms. Nina Gupta, Vibhu Bhakru, Pranab Mullick and Vineet Kumar for the intervener.

The Judgment of the Court was delivered by

D **K.N. SAIKIA, J.** This appeal by certificate is from the Judgment of the Calcutta High Court dated 4.3.1975 passed in appeal No. 156 of 1974.

E The appellants in partnership have been carrying on business of restaurants under the name and style of Trinca's at No. 17B, Park Street Calcutta, providing food and drinks (alcohol and non-alcohol) to the customers under valid licences. Sometimes musical performances are also arranged. The restaurants are provided with air conditioning plant.

F Under the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972 as amended by the Act of 1974, hereinafter referred to as 'the Act', the respondents by their Memo No. 4942/A.T. dated 9.12.1972 called upon the appellants to make *ad hoc* payment of luxury tax calculated at Rs.2,40,000.00. The President of the Hotelers' Association made a representation against this illegal tax which was turned down by the respondents, and thereafter the appellants challenged the validity of this action in the Calcutta High Court by filing Writ Petition No. 358 of 1973 on 16.5.1973. The appellants contended, *inter alia* before the High Court that the levy was unreasonable restriction on carrying the business; the Act was not meaningful and purposeful; the rules were confiscatory in nature; and the mode of calculation was not in conformity with the main object and purpose of the Act. The learned Single Judge of the High Court dismissed the writ petition relying on the Judgment passed on 6.3.1974 in H Writ Petition No. 338 of 1973 wherefrom Civil Appeal No. 406 of 1976 was filed in this Court.

From the above order of the learned Single Judge, the appellants filed Appeal No. 156 of 1974 on 26.6.1974 before the Division Bench of the Calcutta High Court contending that the legislature cannot enlarge the scope of Entry 62 and seek to impose a tax on expenditure incurred by a customer on services rendered to him including food and drinks. The High Court held that s. 2(b) defined entertainment tax but s. 2(c) defined entertainment tax and under the Act entertainment tax meant tax payable under s. 3 of the Act. A clear distinction had been made between entertainment and entertainment tax and in this case the High Court was concerned only with entertainment tax as defined in s. 2(c). The second submission before the High Court was whether the State legislature had the competence to impose entertainment tax payable under s. 3 of the Act and the High Court held that s. 3 was a valid piece of legislation. The argument of the appellants was that tax imposed by s. 3 was discriminatory and it violated Art. 14 of the Constitution. The High Court held that the differentia made in s. 3 had a rational relation to the object sought to be achieved by the statute. The last submission was whether the persons enjoying the same facilities had been treated differently as the section had imposed a maximum tax of 15% on amount paid or payable by the customer. The High Court held that since a distinction had to be maintained between s. 2(b) and s. 2(c), the learned counsel's argument on discrimination could not be acceded to. The appeal was accordingly dismissed, but certificate of fitness to appeal was granted.

The contentions raised in this appeal are the same as were raised in Civil Appeal No. 406 of 1976 which has just been dismissed. In *East India Hotels Ltd. v. State of West Bengal*, AIR 1990 SC 2029 this Court held that whatever has been said by this Court in relation to s. 4 of the Act will be equally applicable to s. 3 of the Act. Consequently, for the above reason and for the reasons stated in our Judgment in Civil Appeal No. 406 of 1976, we dismiss this appeal also with costs quantified at Rs.5,000 (Rupees five thousand).

G.N.

Appeal dismissed.