

The Indian Law Reports

CIVIL MISCELLANEOUS

Before H. R. Khanna, J.

MESSRS JUBLI CINEMA AND OTHERS,—*Petitioners*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 1548 of 1963

*Punjab Entertainments Duty Act (XVI of 1955)—S. 20—
Punjab Entertainments Duty Rules (1955)—Rule 17—Whether
valid—Best judgment assessment—Whether can be made—Power to
prosecute under S. 15—Whether stands in the way of making assess-
ment.*

1964

November, 13th.

Held, that rule 17 of the Punjab Entertainments Duty Rules, 1955, which relates to the assessment relating to the evaded duty, is perfectly valid as it should be deemed to have been framed with a view to carry out the provisions of the Punjab Entertainments Duty Act, 1955. To hold that the officer of the Excise and Taxation Department can call upon the proprietor to produce the relevant accounts and documents in order to see that the requisite duty has been paid and yet is not competent to make an order for assessment in respect of evaded duty would be virtually reducing the provisions of the Act to a farce, and thus defeating the very object of the Act. The fact that the sum due under the Act can be realised as arrears of land revenue also lends support to the view that an assessment of the evaded duty can be made because the sum due can only be arrived at as a result of assessment. Looked at in this light, rule 17 should be held to fall within the ambit of the plenary power given to the Government by sub-section (1) of section 20 of the Act. Cases under rule 17, which relate to free and concessional entries, would be covered by clause (k), but cases other than those of free and concessional entries can well be taken to fall under clause (j) which relates to collection of entertainments duty under the Act. In any case the different clauses of sub-section (2) of section 20 are not intended to be exhaustive, and even if a rule may not strictly fall within any of the clauses of sub-section (2), it can still fall under sub-section (1) of section 20 if the rule is framed to carry out the provisions of the Act.

Held, that the Entertainments Tax Officer is entitled to make the assessment to the best of his judgment in case the party concerned does not comply with the notice by producing his accounts and satisfying the officer about their correctness. Such a power is inherent in the general power of assessment and no separate provision is necessary in the Act to clothe the officer with power to make such an assessment.

Held, that the power to prosecute the offender for evasion of entertainments duty under section 15 of the Act does not stand in the way of making assessment in respect of the evaded duty.

Petition under Articles 226/227 of the Constitution of India praying that a writ in the nature of Certiorari or any other appropriate writ, order or direction be issued quashing the orders of respondents Nos. 2 and 3 dated the 2nd March, 1959 and 29th June, 1963 respectively.

ATMA RAM, ADVOCATE, for the Petitioner.

M. R. SHARMA, ASSISTANT ADVOCATE-GENERAL, for the Respondents.

ORDER

Khanna. J.

KHANNA, J.—Question relating to the vires of rule 17 of the Punjab Entertainments Duty Rules, 1956 (hereinafter referred to as the Rules) arises for determination in this petition under Articles 226 and 227 of the Constitution of India filed by Messrs Jubli Cinema, Faridkot, for quashing the orders dated 2nd March, 1959, of Excise and Taxation Officer-cum-Entertainment Tax Officer, Bhatinda (respondent No. 2) and 29th June, 1963 of Joint Excise and Taxation Commissioner, Punjab, respondent No. 3. The State of Punjab has also been impleaded as respondent No. 1.

The brief facts of the case are that the Entertainment Tax Officer, Bhatinda, carried out a surprise raid on the cinema of the petitioner at Faridkot on 1st February, 1959, and detected a number of irregularities denoting the evasion of entertainments duty by the management through surreptitious and free entries. It also came to light that the management was maintaining duplicate unstamped ticket books from which they had been issuing tickets to the spectators without affixing the entertainments duty stamps thereon. A notice on the basis of this detection was issued to the management. Further detection of evasion of

entertainments duty came to light during a surprise inspection made on 13th February, 1959, when it was found that the tickets issued to the spectators were fraudulently understamped by the management by cutting the regular tickets into two halves and using only one such half portion on one ticket. A further notice for assessment was thereupon issued. Respondent No. 2 passed the order on 2nd March, 1959, determining the amount of Rs. 12,401.43 paise as the entertainments duty, the payment of which had been evaded by the petitioners from 15th June, 1958 to 13th February, 1959. The petitioners thereupon filed a revision under section 12 of the Punjab Entertainments Duty Act, 1955 (Punjab Act No. XVI of 1955)—hereinafter referred to as the Act—against the order of respondent No. 2. Respondent No. 3 dismissed the aforesaid revision on 29th June, 1963. The petitioners thereafter filed the present writ petition on 22nd August, 1963.

Messrs Jubli
Cinema and
others

v.
The State of
Punjab and
others

Khanna, J.

The first contention, which has been raised by Mr. Atma Ram on behalf of the petitioners, is that rule 17 of the Rules, under which the impugned assessment has been made and the petitioners have been called upon to pay Rs. 12,401.43 paise is *ultra vires*, because there is no provision in the Act under which the aforesaid rule could be framed. Rule 17 reads as under:—

“(1) When it appears to the officer authorized by Government under section 13(1) of the Act that an assessment or payment for admission in case of free concessions, surreptitious or unauthorized entries should be made, he shall serve upon the proprietor, a notice in form P.E.D. 5:—

- (a) calling upon him to produce his books of accounts or other documents, which such officer wishes to examine together with any objection which the proprietor may wish to prefer and any evidence, which he may wish to produce in support thereof; and
- (b) stating the period or periods in respect of which assessment is proposed, provided that the notice shall not relate to a period prior

Messrs Jubli
Cinema and
others

v.
The State of
Punjab and
others

Khanna. J.

to twelve months from the date of issue of notice,

and he shall fix a date, originally not less than ten days after the date of the service of the notice for producing such accounts and documents and considering any objection, which the proprietor may prefer.

- (2) Where the Entertainment Tax Officer is satisfied that the proprietor has duly paid in full the amount of entertainments duty due from him on the entries under assessment, he shall discharge the notice in form P.E.D. 5 served upon him and shall send an intimation to that effect to the proprietor.
- (3) Where, after considering any objection made by the proprietor, and any evidence produced in support thereof, the Entertainment Tax Officer determines the liability of the proprietor at a figure higher than the amount of entertainment duty admitted by the proprietor, he shall record an order stating briefly the reasons on which his decision is based, but a failure to state reasons shall not affect the validity of the assessment order.
- (4) Every Entertainment Tax Officer shall maintain a register in form P.E.D. 6 in which he shall enter the details of each case instituted under sub-rule (1) above."

It may be stated that the words "twelve months" in clause (b) of sub-rule (1) above were substituted by the words "three years" by a subsequent amendment, but that is not very material for the purposes of the present case. Rule 17 along with the other rules has been framed by the Government under section 20 of the Act, and, according to Mr. Atma Ram, section 20 does not authorise the Government to frame a rule like rule 17. In my opinion, this contention is not well-founded. Before reproducing the exact provision of section 20, under which rule 17 could have been framed, it would be useful to refer to the other provisions of the Act. The Act was enacted to provide for

the levy of an entertainments duty in respect of admission to public entertainments. Clause (e) of section 2 of the Act defines the words "payment for admission". Sub-clause (ii) of clause (e) shows that payment for admission includes—

Messrs Jubli
Cinema and
others

^{v.}
The State of
Punjab and
others

Khanna, J.

"In cases of free, surreptitious, unauthorised or concessional entry, the payment which would have been made if the person concerned had been admitted on payment of the full charges, ordinarily chargeable, according to the assessment of the authority prescribed."

Sub-section (1) of section 3 of the Act contains the charging provision and reads—

"A person admitted to an entertainment shall be liable to pay an entertainments duty at a rate, not exceeding half of the payment for admission which the Government may specify, by a notification in this behalf, and the said duty shall be collected by the proprietor and rendered to the Government in the manner prescribed."

Section 4 provides for the payment of entertainments duty in a consolidated sum, while section 5 makes provision for the deposit of security by the proprietor of an entertainment. Section 6 authorises the Government to appoint Entertainment Tax Officers and Commissioner, and section 7 makes it obligatory on the proprietor of an entertainment to exhibit the rates of payments for admission. Section 8 provides for the penalty for non-payment of duty by a person who enters an entertainment, while section 9 exempts the *bona fide* employees from payment of such duty. Section 10 prescribes the method of the levy of duty, while section 11 authorises the Commissioner to grant exemption from payment of duty in certain cases. Section 12 gives a power of revision to the Commissioner. Section 13 makes it obligatory on the proprietor of an entertainment to produce before the authorised officer the accounts and documents relating to the entertainment duty, and section 14 gives a right to the prescribed officer of entry into and inspection of places of entertainments. Section 15 makes it an offence for the proprietor of an

Messrs Jubli
Cinema and
others
v.
The State of
Punjab and
others
—
Khanna, J.

entertainment to fraudulently evade the payment of duty, while section 16 authorises the prescribed authority to compound the offence. According to section 17 the sums due under the Act shall be recoverable as arrears of land revenue. Section 18 authorises the Government to delegate its powers to a subordinate authority, and section 19 protects anything done in good faith by an officer under the Act. Section 20 empowers the Government to frame rules. Sub-section (1) of section 20 as also clauses (j) and (k) of sub-section (2) of that section read as under:—

“(1) The State Government may make rules generally for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power it may make rules—

*	*	*	*	*	*
*	*	*	*	*	*
*	*	*	*	*	*
*	*	*	*	*	*

(j) for the collection of entertainments' duty under this Act and the powers to be exercised by the officers of Government in that behalf;

(k) for assessment of payment for admission in cases of free and concessional entries by prescribed authorities;”

It would appear from the provisions of the Act, referred to above, that in cases of free, surreptitious, unauthorised or concessional entry, the payment for admission has to be made of the amount which would be payable if the person concerned had been admitted on payment of the full charges, ordinarily chargeable. Sub-section (1) of section 3 makes it obligatory on the proprietor to collect from the person admitted to an entertainment the duty payable by him. Section 13 authorises the officer of the Excise and Taxation Department to call upon the proprietor to produce the relevant accounts and documents in order to see that the requisite duty under the Act is paid. In the circumstances, rule 17, which relates to the assessment relating to the evaded duty, should be deemed to have been framed with a view to carry out the provisions of the Act. To hold

that the officer of the Excise and Taxation Department can call upon the proprietor to produce the relevant accounts and documents in order to see that the requisite duty has been paid and yet is not competent to make an order for assessment in respect of evaded duty would be virtually reducing the provisions of the Act to a farce, and thus defeating the very object of the Act. The fact that the sum due under the Act can be realised as arrears of land revenue also lends support to the view that an assessment of the evaded duty can be made because the sum due can only be arrived at as a result of assessment. Looked at in this light, rule 17 should be held to fall within the ambit of the plenary power given to the Government by sub-section (1) of section 20 of the Act. Cases under rule 17, which relate to free and concessional entries, would be covered by clause (k), but cases other than those of free and concessional entries can well be taken to fall under clause (j) which relates to collection of entertainments duty under the Act. In any case the different clauses of sub-section (2) of section 20 are not intended to be exhaustive, and even if a rule may not strictly fall within any of the clauses of sub-section (2), it can still fall under sub-section (1) of section 20 if the rule is framed to carry out the provisions of the Act. As observed above, rule 17 has been framed to carry out the provisions of the Act, and, in the circumstances, I am of the opinion that the State Government was well within its power to make that rule.

It has also been argued by Mr. Atma Ram that form P.E.D. 5, to which reference has been made in rule 17, recites that in the event of a party's failure to comply with the notice issued to him, the Entertainment Tax Officer would proceed to assess the amount of entertainments duty to the best of his judgment. It is contended that there is no provision in the Act which authorises the authority concerned to make the assessment to the best of his judgment, and as notice in form P.E.D. recites that the party concerned can make such an assessment, the form as well as rule 17 are not in conformity with law. This contention is also devoid of force. All that the notice in form P.E.D. 5 states is that in the event of the failure of an assessee to comply with the notice the Entertainment Tax Officer would proceed with assessment to the best of his judgment. This statement in the notice is a necessary corollary to what is

Messrs Jubli
Cinema and
others

v.
The State of
Punjab and
others

Khanna, J.

Messrs Jubli
Cinema and
others

v.
The State of
Punjab and
others

Khanna, J.

stated earlier that the assessee, in case he has any objection to the assessment, should appear before the officer concerned on the date fixed with the documents specified in the notice. It is plain that if, despite notice, the assessee fails to appear before the officer concerned with the documents, the officer can have no option but to make the assessment to the best of his judgment. No separate provision is necessary, in my opinion, in the Act to clothe the officer with power to make such an assessment because such a power is inherent in the general power of assessment.

Reference has been made on behalf of the petitioners to *Messrs Gopi Nath-Madan Gopal v. The State of Punjab and another* (1), in which Grover, J., held that rule 36(3)(a) was *ultra vires* of the Act. The aforesaid rule made it obligatory upon a person filing a revision petition to deposit the amount of duty imposed and to make an endorsement about that fact in the revision petition. It was held that there was no provision in the Act which authorised the Government to impose such a condition. The above authority related to an entirely different provision and I fail to understand as to how the petitioners in the present case can derive any benefit from it.

It has also been argued that in case of any evasion in the payment of duty, the remedy of the authorities concerned was to prosecute the petitioners for the offence under section 15 of the Act for which the maximum fine, which can be imposed, is Rs. 2,000 and not to make the assessment under rule 17. There is, in my opinion, no force in this argument. The fact that the authorities could also launch criminal proceedings against the petitioners, did not stand in their way in making the assessment, if the law allowed them to do so. Argument is also advanced that the assessment should have related to the evasion of duty on only those days on which there was surprise inspection. This contention has also no legs to stand upon because a single day's inspection can reveal an evasion in payment of duty which might have continued for long period. In such an event, the prescribed authority can make the assessment for that entire period provided the statutory limitation is not over.

(1) I.L.R. (1962) 2 Puj. 495=1962 P.L.R. 596.

It has next been argued that the amount which has been claimed from the petitioners on account of entertainments duty is excessive. This is a matter which was essentially for the taxation authorities to decide and this Court cannot in this petition under Article 226 of the Constitution go into it. I have gone through the impugned orders and nothing has been shown to me which would justify interference by this Court in this petition under Article 226 to interfere with the method of calculation adopted in this case.

Messrs Jubli
Cinema and
others

v.
The State of
Punjab and
others

Khanna, J.

Lastly, it has been argued that respondent No. 3 was not authorised to decide the revision petition under section 12 which had been filed by the petitioners. This contention is also devoid of force. Section 12 confers a power of revision on the Commissioner or such other officer as the Government may by notification appoint in this behalf. The revision petition filed by the petitioners was decided by Shri R. P. Ojha, Joint Excise and Taxation Commissioner. The Punjab Government bestowed the necessary power under section 12 of the Act on the Joint Excise and Taxation Commissioner as per notification, dated 21st March, 1963. As such respondent No. 3 was competent to decide the revision petition filed by the petitioners. Mr. Atma Ram contends that rules 36 and 38 refer to the Commissioner as the authority competent to decide the revision, and as such the Joint Commissioner was not authorised. In my opinion, rules 36 and 38 cannot undo the effect of section 12 of the Act according to which an officer other than the Commissioner, if he is so authorised by the Government, can decide a revision. The word "Commissioner" as used in rules 36 and 38, in my opinion, includes Joint Commissioner, if the Joint Commissioner is empowered under section 12 of the Act by the State Government.

The petition, accordingly, fails and is dismissed, but, in the circumstances of the case, I leave the parties to bear their own costs.