

Parbhat Talkies and others v. State of Punjab and others
(M. M. Punchhi, J.)

(13) Further in the context of the fact that Daljit Kaur had never been in possession of the shop, the other relevant aspect to be kept in view is that Rent Acts operate on the concept of reciprocity namely the right to continue in possession and the corresponding liability for payment of rent. The fact that a statutory tenant had a heritable interest cannot be deemed to *ipso facto* fasten liability for payment of rent upon his legal heirs unless and until they are in possession of the premises. In other words with Daljit Kaur never having been in possession, there could be no corresponding liability upon her for payment of rent. She cannot, therefore, be heard to rest her claim for relief here on the provisions of the Rent Act. The claim of Daljit Kaur for the relief sought, thus has no legs to stand on. This is all the more so with the concurrent findings of the courts below that this suit had been filed by her at the instance and on behalf of her brothers who were the unsuccessful parties to the earlier suit.

(14) Such, thus being the circumstances here, the impugned findings, judgments and decrees of the courts below warrant no interference in appeal. This appeal is consequently hereby dismissed with costs throughout.

S.C.K.

Before M. M. Punchhi and Amarjeet Chaudhary, JJ.

PARBHAT TALKIES AND OTHERS,—*Petitioners.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 6101 of 1987

July 25, 1988.

Constitution of India, 1950—Art. 14—Punjab Entertainment Duty Act (XVI of 1955)—S. 1A—Liability to pay duty—Different duties payable on entertainment provided by different methods—Separate classification of Cinema and Video—Such classification whether discriminatory.

Held. that if two species of entertainment offered by two different methods, by two different means and magnitude, in different

surrounds attract entertainment duty differently, we fail to see how Article 14 of the Constitution of India, 1950 is attracted, to spell out the vice of discrimination. The State has to run on taxes and various avenues for the purpose are tapped by it. The current legislation has to cope up with the changing situations and keep legitimately states coffers full for expending. Therefore, we are of the considered view that classifying replay of video tapes, video cassette and video records through the medium of any video tape player, video cassette player etc. is a species apart on which separate entertainment duty could, without violating Article 14 of the Constitution, be leviable.

(Para 6)

Petition under Article 226/227 of the Constitution of India praying that:—

- (a) *A writ in the nature of certiorari challenging/quashing the vires of Section 3 of the Punjab Entertainment Duty Act, 1986 as being discriminatory and ultra vires of the Constitution of India, may be issued.*
- (b) *And or any other writ, order or direction, which this Hon'ble Court may deem fit in the circumstances of the case may be issued.*
- (c) *Filing of certified copy of Annexure P. 2 may be dispensed with.*
- (d) *Issue of notice of motion may be dispensed with.*

H. L. Sibal, Senior Advocate with Ravinder Seth, Advocate, for the Petitioners.

S. S. Saron, A.A.G. Punjab, for the Respondents.

JUDGMENT

M. M. Punchhi, J. (Oral).

(1) Article 14 of the Constitution of India has been invoked by the petitioners-cinema owners and an Association of cinema-owners, operating in the State of Punjab, to challenge the insertion of sub-section (1-A) in section 3 of the Punjab Entertainment Duty Act, 1955 (for short 'the Act') with effect from April 1st 1986, Annexure P.1 to the petition.

(2) Section 3 of the Act is the charging section where duty on payments for admission to entertainments is chargeable. The word

Parbhat Talkies and others v. State of Punjab and others
(M. M. PUNCHHI, J.)

'entertainment' has been defined in section 2(d) of the Act to include any exhibition, performance, amusement, game, sport or race to which persons are ordinarily admitted on payment. Section 3(1) provides that a person admitted to an entertainment shall be liable to pay an entertainment duty at a rate not exceeding 125 per centum 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. Under this provision, the cinema owners have to pay duty charged per capita on the sale of tickets for the cinema shows arranged by them.

(3) On the scene has arrived a competitor of a smaller dimension, the television and its brother gadgets the V.C.R., the video cassette etc., which have gone to provide entertainment publicly as also privately. This Court in *M/s. Deep Snack Bar Sonapat and others vs. State of Haryana and another*, (1) while examining the question whether exhibition of motion pictures in a restaurant by means of V.C.Rs and T.V. Sets falls within the definition of the word 'entertainment' as defined in section 2(d) of the Act, held that it was an 'entertainment' coverable under the said provision. One of us was a party to that judgment. This Court had strongly learned on the ratio of *M/s Geeta Enterprises and others vs. State of U. P. and others*, (2) to arrive at that view.

(4) On the arrival of V.C.R. exhibited films and their exhibition by means of television, the State of Punjab has taxed exhibitors by means of the impugned legislation as follows :

"(1-A) Notwithstanding anything contained in sub-section (1) the Government may, by notification, levy lump sum entertainment duty at a rate not exceeding:—

- (a) four thousand rupees per annum in the local area of a city constituted as such under the Punjab Municipal Corporation Act, 1976 or of a municipality declared as such under the Punjab Municipal Act, 1911; and
- (b) three thousand rupees per annum in areas other than the local areas specified II in clause (a); in respect of entertainments arranged by a proprietor by replay of video tape, a video cassette of a video record through

(1) AIR 1984 Pb. & Hry. 377.

(2) A.I.R. 1983 S.C. 1098.

the medium of any video tape player, video cassette player or video record player and the lump sum duty so devise shall be recoverable from the proprietor.”

(5) Distinctively it is clear that entertainment duty per capita is payable on cinema shows under section 3(1) but section 3(-A) of the Act attracts entertainment duty per stirpes. There is an obvious distinction discernable in the two kinds of entertainment attracting two different entertainment duties.

(6) Now, here is a rub. Mr. H. L. Sibal, learned counsel for the petitioners, says that when the word ‘entertainment’ is one and defined singularly as such in section 2(d) as inclusive of any exhibition, performance, amusement, game, sport or race, to which persons are ordinarily admitted on payment, distinction is permissible only between performance and amusement, amusement and game, game and sport, sport and race and the like and there can be no distinction between an entertainment and an entertainment so as to attract different scales of entertainment duty. There is an obvious fallacy in the argument. Singular would include a plural; so it is understood in the jurisprudential sense. If two species of entertainment offered by two different methods, by two different means and magnitude, in different surroundings attract entertainment duty differently, we fail to see how article 14 is attracted, to spell out the vice of discrimination. The State has to run on taxes and various avenues for the purpose are tapped by it. The current legislation has to cope up with the changing situations and keep legitimately states coffers full for expending. Therefore, we are of the considered view that classifying replay of video tapes, video cassette and video records through the medium of any video tape player, video cassette player etc. is a species apart on which separate entertainment duty could, without violating Article 14 of the Constitution, be leviable.

(7) In order to be fair to Mr. Sibal, we must also notice that in *M/s. Deep Snack Bar's* case (supra), this Court had held that both the cinemas and video tape exhibitions were cinematographs coverable under the Cinematograph Act, 1952. That *per se* would not lead us anywhere so as to touch even remotely the question dealt with heretofore.

(8) Finding no merit in the petition, we dismiss it *in limine*.

S.C.K.