

Wazir Chand and others  
 v.  
 Piran Ditta and others

the record inasmuch as he completely misunderstood the significance of rule 30 and thereby deprived the appellants of their right to the allotment of this house.

Khosla, C. J.

I would accordingly allow this appeal and setting aside the order of Grover J., allow the petition for a writ of *certiorari*. The order of Mr. Johnson will be quashed and the matter will be disposed of in the light of the remarks made by me. In the circumstances of the case, there will be no order as to costs.

Shamsher  
 Bahadur, J.

SHAMSHER BAHADUR, J.—I agree.

R.S.

CIVIL MISCELLANEOUS

Before Bishan Narain, J.

ASSOCIATED HOTELS OF INDIA LTD.—Petitioners.

*versus*

THE UNION OF INDIA AND OTHERS.—Respondents.

Civil Writ No. 90-D of 1957.

1960  
 August, 9th.

*U. P. Entertainment and Betting Tax Act (VIII of 1937)—Section 3—Hotel maintaining a swimming pool which is open to residents free of charge and to non-residents on payment—Non-resident bathers in the swimming pool—Whether liable to pay entertainment tax—Constitution of India (1950)—Article 226—Entertainment Tax Officer issuing notice that charges for admission to swimming pool are taxable—Whether entitles the recipient of the notice to file a writ for getting the notice quashed.*

*Held that, that facilities provided by the management of the hotel to the bathers in the swimming pool maintained by it cannot be considered to be "entertainment" within the U. P. Entertainment and Betting Tax Act, 1937, however wide a meaning is given to this expression. The*

persons who go to the pool to bathe there do not go to a place of entertainment nor can it be said that a bather on payment of admission charges when entering the pool is entering a place where an entertainment is being held. It, therefore, follows that a non-resident bather is not liable to pay the entertainment tax.

*Held*, that the receipt of the letter by the hotel management from the Entertainment Tax Officer to the effect that the charges for admission to the swimming pool were taxable implied that they were called upon to pay entertainment tax on those charges and if they did not do so, then proceedings under section 5 of the Act would be taken. This communication is a serious threat to the petitioners that their fundamental rights are about to be infringed and this threat entitles them to challenge the validity of the notice by a petition under Article 226 of the Constitution.

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

- (a) a Writ of mandamus be issued restraining the Respondents from imposing, levying, assessing and collecting any entertainment tax in exercise of the power under the U. P. Entertainment and Betting Tax Act, VIII of 1937, as extended to Delhi with respect to the fees and charges made by the Petitioners from persons using the Swimming Pool in their Hotel known as Maiden's Hotel, Delhi;
- (b) Respondent No. 1, be directed to withdraw all notices issued in this behalf and refund the collections made;
- (c) any other appropriate Writ, direction or order that the court may deem fit and proper in the circumstances of the case, may be, issued to meet the ends of justice, and
- (d) costs of this petition be awarded.

S. N. ANDLEY, ADVOCATE, for Petitioner.

JINDRA LAL AND MR. DALJIT SINGH, ADVOCATES, for Respondent.

## ORDER

Bishan Narain, J.

BISHAN NARAIN, J.—The Maiden's Hotel, Delhi, is owned and managed by the Associated Hotels of India Limited. It is run and managed as first class English Hotel. It has a swimming pool. It is used by the residents of Hotel and also by non-residents. Hotel charges Rs. 2 per person from non-residents for actual user of the pool. If a person visits the pool, but does not use it, then he is not charged. On 12th November, 1956 the Entertainment Tax Officer appointed under the U.P. Entertainment and Betting Tax Act (Act 8 of 1937), as extended to Delhi, wrote to the Associated Hotels of India Limited that charges for admission to the swimming pool are taxable under the provisions of the U.P. Entertainment and Betting Tax Act, 1937. Thereupon the Associated Hotels of India Limited filed the present petition under Article 226 of the Constitution challenging the validity of the notice sent by the Entertainment Tax Officer calling upon the petitioners to pay the entertainment tax on the charges made for use of the swimming pool.

The learned counsel for the State urged as a preliminary objection that the petitioners by this petition seek in substance to by-pass the provisions of the U.P. Entertainment and Betting Tax Act and to get an academic question decided by this court. He contended that by the impugned communication the Entertainment Tax Officer had merely pointed out to the petitioners that according to law they are liable to pay entertainment tax on the admission charges paid by those who used the swimming pool of the petitioners. He further contended that in the absence of any proceedings having been taken under the said Act, it was not open to the petitioners to approach

this court under Article 226 of the Constitution. According to the learned counsel the petitioners should have waited till proceedings under section 5 of the U. P. Entertainment and Betting Tax Act had been taken against them.

Associated  
Hotels of  
India Ltd.  
v.  
The Union of  
India and others  
Bishan Narain, J.

Now section 3 of the U. P. Entertainment and Betting Tax Act is the charging section and lays down the rates at which the tax is to be levied and paid on all payments for admission to any entertainment. This tax is to be realised by issue of a ticket stamped by the Government denoting that the said Tax has been paid (section 4). Under section 5 a person, who obtains an admission to an entertainment and also the proprietor of the entertainments are liable to pay a fine in addition to the tax which has not been recovered on conviction before a Magistrate. It follows that the petitioners on receipt of this letter are being called upon to pay entertainment tax on these charges and if they did not do so, then proceedings under section 5 of the Act would be taken. In these circumstances it appears to me that impugned communication is a serious threat to the petitioners that their fundamental rights are about to be infringed. The principle laid down by the Supreme Court on this matter in *Himmatlal Harilal Mehta v. The State of Madhya Pradesh and others* (1), fully applies to the present case. The preliminary objection, therefore, fails and is rejected.

On merits this petition raises an interesting question. Is the payment for a ticket of admission by a bather to bathe and swim in the swimming pool of the petitioners is a payment for admission to an entertainment under the U. P. Entertainment and Betting Tax Act?

Now this pool is a place where people bathe and swim. The company has constructed it to

(1) 1954 S.C.R. 1122.

Associated  
Hotels of  
India Ltd.  
?.  
The Union of  
India and others  
Bishan Narain, J.

enable the residents of this Hotel to bathe there and to enjoy themselves. Swimming is also good for health. This facility is also given to persons not residing in this Hotel on payment of Rs. 2. If a visitor to the pool does not bathe in the pool, then he is not charged anything. It is nobody's case that the petitioners provide any kind of entertainment or music during the time that the pool is open for bathing nor it is alleged that during this time the petitioners arrange for exhibition of swimming, etc. All that happens is that people bathe and swim there and then go away. The company only supplies fresh water in the pool and probably the necessary facilities for changing clothes, etc. I have no doubt that there to see that these facilities are not misused the Company also posts some of its employees and that bathers are able to bathe and swim comfortably. Obviously these facilities cannot be considered to be "entertainment" within the Act. however, wide a meaning is given to this expression. I am clearly of the opinion that the persons who go to the pool to bathe there do not go to a place of entertainment. After all a common-sense view of the matter must be taken. It is impossible to say that a bather on payment of admission charges when entering the pool is entering a place where an entertainment is being held. It, therefore, follows that a non-resident bather is not liable to pay entertainment tax.

There is another way of looking at the matter. The entertainment tax is payable by a person, who pays for admission to an entertainment (section 3). The tax, however, is to be collected by the proprietor, who is responsible for the management of the entertainment (section 4). Under section 5 the proprietor is liable to pay a fine if he does not realise this tax from the person

entering the place of entertainment after payment of admission. It follows that in every case where entertainment tax is leviable, there must be a proprietor or manager in relation to the entertainment which is being held at that place. This implies an organised exhibition. It is impossible to hold that when a bather is entering this pool after paying admission charges, then he is visiting a place where an entertainment is being held in relation to which the petitioners are the proprietors. The bathers voluntarily come and bathe and go away as and when they like. On a given day there may not be a single bather in the pool. Therefore, a bather is not being admitted to a place of entertainment and, therefore, he cannot be called upon to pay entertainment tax on the admission charges.

Associated  
Hotels of  
India Ltd  
v.

The Union of  
India and others

Bishan Narain, J.

Some English cases were brought to my notice by the learned counsel for the petitioners, but they are not of much assistance because in the English Act the expression "admission" has been defined as limited to spectators and audience. There is no such definition in the Act with which I am dealing in the present case. However, the case reported in *Attorney-General v. Southport Corporation* (1), has been of considerable assistance to me in deciding this case.

For these reasons, I accept this petition and quash the communication sent by the Entertainment Tax Officer to the petitioners on 12th November, 1956, as not being in accordance with law on the ground that no entertainment tax is payable on the admission charges to the swimming pool of the petitioners. There will be no order as to costs.

**B.R.T.**

---

(1) (1934) 1 K.B. 226.