

CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan and Gurdev Singh, JJ.

GRAND CINEMA, MANSA, DISTRICT BHATINDA, THROUGH

DEV BHUSHAN,—*Petitioner.*

versus

THE ENTERTAINMENT TAX OFFICER, BHATINDA

AND OTHERS,—*Respondents.*

Civil Writ No. 2084 of 1968

February 21, 1968

Punjab Entertainment Duty Act (XVI of 1955 as amended by V of 1963)—S. 14-A—Whether ultra vires Article 14—Constitution of India (1950).

Held, that on combined reading of section 14-A, and 15 of the Punjab Entertainment Duty Act, 1955 as amended by Act V of 1963, it is obvious that section 15(1) of the Act specifies the offences as well as the punishment for the same. Sub-section (2) of Section 15 provides as to who will take cognizance of the offences. According to this provision, it is a Magistrate of the First Class who takes cognizance on a complaint made by a person authorized in this behalf. Under section 14-A of the Act, the offences and penalties are the same as in section 15(1). The only difference is that an Authority Prescribed imposes the penalty after affording the proprietor a reasonable opportunity of being heard. In section 15 also, the proceedings are against the proprietor. Thus, for the same offence, there are two different modes of trial. A trial before a Magistrate means that the evidence has to be judged according to the rules laid down in the Evidence Act and the trial has to be according to the procedure prescribed in the Code of Criminal Procedure; whereas in a case under section 14-A, only an opportunity of a hearing before a Prescribed Authority is provided. Thus it is only a hearing before a *quasi-judicial* Tribunal and the only requirement is that it would be according to the rules of natural justice. There is no criteria in the Act or its preamble or the rules made thereunder as to in what cases covered by section 15(1), action is to be taken under section 15(2) or Section 14-A. The matter is left entirely to the sweet discretion of the executive authority. A citizen is entitled to urge that if there are two parallel provisions for the same purpose, he is entitled to the benefit of a more beneficial provision; or otherwise there would be discrimination so far as he is concerned. Hence section 14-A of the Act is *ultra vires* the Article 14 of Constitution of India.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ of certiorari, mandamus, or any other writ, order or direction be issued quashing the order, dated 10th September, 1963, passed by Shri O. P. Bhardwaj, Entertainment Officer, Punjab. and the order, dated 15th October, 1963, passed by Shri I. L. Dawra, Entertainment Officer, Bhatinda.

ATMA RAM, ADVOCATE, for the Petitioner.

S. K. JAIN, ADVOCATE, FOR ADVOCATE-GENERAL, for the Respondent.

ORDER

MAHAJAN, J.—This order will dispose of Civil Writ Petitions Numbers 2084 of 1963 and 136 of 1964. They relate to two different orders, but the point, that requires determination being common to both of them, therefore, they are being disposed of by one order.

These petitions, under Articles 226 and 227 of the Constitution of India, were referred to a larger Bench by Shamsheer Bahadur J., in view of the importance of one of the principal points that arose for determination and which, in our opinion, really concludes the matter.

The principal question, that requires determination, is, whether section 4 of the Punjab Taxation Laws (Amendment) Act, 1963, which introduced section 14-A in the Punjab Entertainments Duty Act (Act No. XVI of 1955), is *ultra vires* Article 14 of the Constitution of India?

The petitioner, in both the cases, is Grand Cinema, Mansa, and has filed the present petitions through Shri Dev Bhushan, Manager and Shri Jagdish Lal Sharma, Partner. In both these petitions, action taken by the Prescribed Authority under section 14-A is called in question on the ground that this provision is *ultra vires* Article 14 of the Constitution of India. To appreciate this contention, it will be necessary to set out the relevant provisions of the Parent Act. Section 10 provides for the method of levy of entertainment tax. Section 13 provides for the production and inspection of accounts and documents with the object of realization of the entertainment duty. Section 14 gives the power to the officer of a Prescribed rank for entry and inspection of the places of entertainment. Section 15, which is the principal section, and on which the entire

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argument has turned, provides for offences and penalties and reads thus:

“15. (1) If the proprietor of an entertainment.

- (a) fraudulently evades the payment of any duty due under this Act, or
- (b) obstructs any officer making an inspection a search or seizure under this Act, or
- (c) acts in contravention of, or fails to comply with any of the provisions of this Act or the rules thereunder, he shall, on conviction, be liable in respect of each such offence to a fine which may extend to one thousand rupees, and when the offence is a continuing one, with a daily fine not exceeding fifty rupees during the period of the continuance of the offence.

(2) No Court shall take cognizance of an offence under this Act or under the rules made thereunder except on a complaint made by a person authorised in this behalf by the Government, and no Court inferior to that of a Magistrate of the first Class shall be competent to try any of the offences under this Act.”

This section was amended in 1963 and the figure “one thousand” has been replaced by the figure “two thousand” [section 5 of the Punjab Taxation Laws Amendment Act (Act No. 5 of 1963)].

Section 16 gives the power to the Prescribed Authority to compound offences and reads thus:—

- “16. (1) The prescribed authority may, at any time, accept from a person, who has committed an offence under this Act, by way of composition of such offence, a sum of money not exceeding two hundred and fifty rupees or double the amount of duty payable under this Act, whichever is greater.
- (2) On payment of such sum of money, as may be determined under sub-section (1), the Prescribed Authority shall, where necessary, report to the court that the offence has been compounded and thereafter no further proceedings

shall be taken against the offender in respect of the same offence and the said court shall discharge or acquit the accused, as the case may be."

Section 14-A, as already stated, was added to the Parent Act in the year 1963, and reads thus:—

"14A. (1) Where a proprietor of an entertainment commits any of the acts specified in sub-section (1) of section 15, the prescribed authority may, after affording such proprietor a reasonable opportunity of being heard, direct him to pay, by way of penalty in addition to the tax assessed by it on such proprietor, if any, under sub-clause (ii) of clause (e) of section 2, a sum not exceeding two thousand rupees.

(2) No prosecution for an offence under this Act shall be instituted against a proprietor of an entertainment in respect of the same facts on which a penalty has been imposed on him under sub-section (1)".

The only other provision, that need be noticed, is section 8 of the Punjab Cinemas (Regulation) Act (Act 11 of 1952). Section 8 of this Act has been amended by the Punjab Cinemas (Regulation) Amendment Act (Act No. 4 of 1963). The amended section 8, as it stands now, is reproduced below:—

"8. (1) Notwithstanding anything contained in this Act, the State Government or the Licensing Authority may, at any time, suspend, cancel or revoke a license, granted under section 5, on one or more of the following grounds, namely:—

x	x	x
x	x	x

(e) the licensee has been convicted for not less than three times of an offence punishable under clause (a) of sub-section (1) of section 15 of the Punjab Entertainments Duty Act, 1955, or has compounded such offence for not less than three times under section 16 of that Act;

(f) a penalty under section 14-A of the Act referred to in clause (e) has been imposed for not less than three times on the licensee; or

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(g) x x x x

- (2) Where the Government or the licensing authority is of the opinion that a licence granted under section 5 should be suspended, cancelled or revoked, it shall, as soon as may be, communicate to the licensee the grounds on which the action is proposed to be taken and shall afford him a reasonable opportunity of showing cause against the action proposed to be taken.
- (3) If, after giving such opportunity, the Government or the licensing authority, as the case may be, is satisfied that the license should be suspended, cancelled or revoked, it shall record an order stating therein the ground or grounds on which the order is made, and shall communicate the same to the licensee in writing.
- (4) Where the order suspending, cancelling or revoking a license under sub-section (3) has been passed by a licensing authority, any person aggrieved by the order may, within thirty days of the communication of such order to him, prefer an appeal to Government which may pass such order as it thinks fit.
- (5) The order of the Government shall be final."

We have reproduced this provision for the purpose of showing that three consecutive prosecutions in the offence mentioned in section 15 or section 14-A entail forfeiture of the license to exhibit cinematographs.

This now brings us to the consideration of the question of *vires* of section 14-A. It is common ground that all the three consecutive penalties have been imposed under section 14-A, and on different dates. The first petition is a challenge to the orders passed under section 14-A which are Annexures 'P' and 'Q', dated the 10th of September, 1963 and the 15th of October, 1963, respectively; and in the second petition, order, Annexure 'D', dated the 10th of January, 1964, under section 14-A is being challenged. The reason appears to be this that in the order, Annexure 'D' to the second petition, it was observed that—

"x x x x

It is certain that a good deal of evasion of tax is going on in the cinema and now that the penalty has been

imposed on the cinema three times for indulging in the evasion of duty, as follows :

- (1) Rs. 225 on 10th September, 1963.
- (2) Rs. 500 on 15th October, 1963.
- (3) Rs. 250 (present detection);

case should be moved to the District Magistrate, Bhatinda, for the cancellation of the license in accordance with the provisions of law.

x x x x”.

On a combined reading of the provisions quoted above, it is obvious that Section 15(1) specifies the offences as well as the punishment for the same. Sub-section (2) of Section 15 provides as to who will take cognizance of the offences. According to this provision, it is a Magistrate of the First Class who takes cognizance on a complaint made by a person authorized in this behalf. The moment, one turns to Section 14-A, one finds that the offences and the penalties are the same as in Section 15(1). The only difference is that an Authority Prescribed imposes the penalty after affording the proprietor a reasonable opportunity of being heard. In Section 15 also, the proceedings are against the proprietor. Thus, for the same offence, there are two different modes of trial. It cannot be disputed and indeed it was not that one mode is more beneficial than the other and it is also obvious. A trial before a Magistrate means that the evidence has to be judged according to the rules laid down in the Evidence Act and the trial has to be according to the procedure prescribed in the Code of Criminal Procedure; whereas in a case under section 14-A, only an opportunity of a hearing before a Prescribed Authority is provided. Thus it is only a hearing before a *quasi-judicial* Tribunal and the only requirement is that it should be according to the rules of natural justice. There is no criteria in the Act or its preamble or the rules made thereunder as to in what cases covered by Section 15(1), action is to be taken under section 15(2) or Section 14-A. The matter is left entirely to the sweet discretion of the executive authority. The learned counsel for the State has been unable to give us any reasonable basis for differentiating between persons similarly situate in matter of application of these parallel provisions which aim at the same objective. His only contention was

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that the Act aims at collection of tax and to check its evasion. Therefore, in view of the gravity of the matter, it was thought fit to confer discretion on the executive. We are unable to appreciate this argument. A citizen is entitled to urge that if there are two parallel provisions for the same purpose, he is entitled to the benefit of a more beneficial provision; or otherwise there would be discrimination so far as he is concerned. This result follows in the present case and cannot be avoided. The principles, when discrimination results and becomes violative of Article 14 of the Constitution of India, are well-settled. The difficulty only arises in their application to the facts of a given case. In *A. C. Aggarwal v. Mst. Ram Kali* (1), their Lordships of the Supreme Court observed as follows :—

“The inhibition of Article 14 that the State shall not deny to any person equality before the law or the equal protection of the laws was designed to protect all persons against discrimination by the State amongst equals and to prevent any person or class of persons from being singled out as a special subject for discrimination and hostile treatment. If law deals equally with all of a certain well-defined class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons, for the class for whom the law has been made is different from other persons and, therefore, there is no discrimination against equals. Every classification is in some degree likely to produce some inequality but mere production of inequality is not all by itself enough. The inequality produced in order to encounter the challenge of the Constitution must be the result of some arbitrary step taken by the State. Reasonable classification is permitted but such classification must be based upon some real and substantial distinction bearing a reasonable and just relation to the thing in respect of which such classification is made. The presumption is always in favour of the constitutionality of an enactment, since it must be assumed that the legislature understands and correctly appreciates the needs of its own people, and its laws are directed to problem made manifest by experience and its discriminations are based on adequate grounds.”

(1) 1968 P.L.R. 261.

As a matter of fact, the observations of their Lordships of the Supreme Court in a later part of this very decision supports the conclusion at which we have arrived; and I may only refer to the following observations made at page 207 :—

“From the copies of the reports made in these cases to the Magistrate by the police-made available to us at the hearing of these appeals—it is clear that they disclose offences under section 3 against the respondents. Therefore, the question is whether the magistrate can choose to ignore the cognizable offence complained of and merely have recourse to Section 18 and thus deprive the parties proceeded against of the benefit of a regular trial as well as the right of appeal in the event of their conviction. Bearing in the mind the purpose of these provisions as well as the scheme of the Act and on a harmonious construction of the various provisions in the Act, we are of the opinion that in cases like those before us, the Magistrate who is also a court as provided in Section 22 must at the first instance proceed against the persons complained against under the penal provision in Sections 3 or 7 as the case may be, and only after the disposal of those cases take action under section 18 if there is occasion for it. Under section 190(1)(b) of the Code of Criminal Procedure, the Magistrate is bound to take cognizance of any cognizable offence brought to his notice. The words ‘may take cognizance’ in the context means ‘must take cognizance’ has no discretion in the matter, otherwise that section will be violative of Article 14. But as laid down in *Delhi Administration v. Ram Singh*, (2) only an officer mentioned in section 13 can validly investigate an offence under the Act. Hence if the cases before us had been investigated by such an officer, there is no difficulty for the Magistrate to take cognizance of those cases.

x x x x x”.

For the reasons recorded above, we are clearly of the view that Section 14-A is *ultra vires* Article 14 of the Constitution of India because it cannot be justified on any of the grounds enumerated in the various authorities of the Supreme Court dealing with Article 14.

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The net result, therefore, is that these petitions are allowed and the proceedings taken against the petitioner under section 14-A are quashed. In view of the scanty assistance we have received from the counsel for the parties, we will make no order as to costs.

GURDEV SINGH, J.—I agree.

K. S. K.

LETTERS PATENT APPEAL

Before Mehar Singh, C.J. and R. S. Narula, J.

SOHAN SINGH,—Appellant.

versus

ACHHAR SINGH AND OTHERS,—Respondents.

Letters Patent Appeal No. 271 of 1968

February 27, 1968.

Code of Civil Procedure (Act V of 1908)—S. 92—Suit under—Allegations to be made in the plaint in order to invoke jurisdiction of civil Court—Rent not being received by manager of a trust properly—Whether amounts to maladministration of the trust—Manager's wife and son leading immoral life—Such Manager—Whether qualified to continue.

Held, that in order to entitle qualified persons to invoke the jurisdiction of civil court under section 92 of the Code of Civil Procedure, they must allege in the plaint at least one of the two things, viz.—

- (i) that there has been a breach of an express or constructive trust; or
- (ii) that there is necessity of a direction of the Court.

If none of the two allegations is made in the plaint either expressly or by necessary implication, the foundation for a suit under section 92 is not laid. It is, however, not necessary that both the conditions should co-exist. The two requirements have been joined with the word 'or' and not with the word 'and'. Allegation of any one of them in the plaint is enough to satisfy the statutory requirement in this behalf. A suit without any allegation of breach of trust will be competent under section 92 if it is made out that a direction of the Court for administration of the trust is necessary.