A. SURESH

v.

STATE OF TAMIL NADU AND ANR.

NOVEMBER 21, 1996

[B.P. JEEVAN REDDY AND K.S. PARIPOORNAN, JJ.]

Tamil Nadu Entertainments Tax Act, 1939: Sections 3 (2-B), 4 and (ii) and 4-E.

Entertainment Tax—Cable Television—Levy of 40% tax on collections made through exhibition of—Held: not violative of Articles 14 and 19(1) (a) & (g).

Constitution of India, 1950 : Articles 14, 19.

Entertainment Tax—Cable Television—Levy of tax on—Held: no comparison could be claimed with Doordarshan.

The Tamil Nadu Entertainment Tax Act, 1939 was enacted to impose tax on entertainments. The Act was amended to bring within its ambit what was called 'cable television', by imposing a levy of 40% tax on collections made by the appellant through exhibition of the same. The appellant filed a writ petition before the High Court challenging the validity of the Amending Act, which was dismissed. Being aggrieved the appellant preferred the present appeal.

On behalf of the appellant it was contended that the Amending Act violated Article 19(1)(a) of the Constitution; that the tax was in fact and truth a tax on education; that the rate of the tax was prohibitive and was designed to kill the cable television in the interest of cinema theatres; and that the Amendment was violative of Article 14 of the Constitution since it did not levy the tax on Doordarshan.

Dismissing the appeal, this Court

HELD: 1. It may be true that providing entertainment is a form of exercise of freedom of speech and expression. It is quite likely that the appellants also relay the programmes broadcast by Doordarshan

A and other T.V. networks and some of them may be informative in nature or educational in character but the fact remains that their activity is a combination of two rights i.e. business and speech—sub-clause (g) and (a) of clause (1) of Article 19. There is no reason why the business part of it cannot be taxed. If tax can be levied upon entertainment provided by cinemas, if taxes can be levied upon the B Press, it is ununderstandable why the appellants' activity cannot be taxed. Certainly, the appellants cannot claim that their activity is of more significance to society than that of the Press. Where the freedom of speech gets intertwined with business it undergoes a fundamental change and its exercise has to be balanced against societal interests. [952 H, 953 A,B]

C

Secretary, Ministry of Information and Broadcasting, Government of India & Ors. v. *Cricket Association of Bengal & Ors.*, [1995] 2 SCC 16 and *Express Newspapers* v. *Union of India.*, [1985] 1 SCC 641, relied on.

Corpus Juries Secundum (Vol. 16), p.1132, referred to.

D

2.1. The only question is whether the level of taxation is not within reasonable limits and whether its incidence is such as to disable the appellants from exercising their free speech right. Though the appellants have alleged that the tax imposed is too heavy and is E intended to drive them out of their business with a view to help the cinema theatres, no material has been placed to substantiate the said averement. [954 G,H]

2.2. There is also no substance in the grievance that taxes are only levied upon them and not upon Doordarshan. There cannot be any F comparison between Doordarshan and the appellants. Doordarshan is a governmental organisation which is supposed to act in furtherance of public interest. It is not a business carried on by the Government. The revenues collected by it by permitting advertisements are only intended to defray part of the huge expenditure the Government G incurs on establishing and maintaining the broadcasting system throughout the country. By no stretch of imagination can the appellants claim any similarity with Doordarshan. [955 GH, 956 A]

2.3. The reason given by the State for imposing tax at the rate of 40 percent is duly explained by the State. Since the appellants also H carry on business it is their duty to share the burden of the State by

paying taxes like any other business. The entertainment tax is an indirect tax. It is meant to be and is passed on to the consumer i.e. subscriber. In the case of indirect taxes, levy at more than 100 per cent of the value of the goods is not unknown e.g., in the case of customs and central excise duties. As a matter of fact, even in the case of direct taxes, levy at a rate higher than 50% is a regular feature. Of course, these are instances not involving free speech right and stand upon a different plane. [955 E,F]

CIVIL APPELLATE/ORIGINAL JURISDICTION : Civil Appeal Nos. 14737, 14727-28 of 1996.

From the Judgment and Order dated 30.11.94 of the Madras High Court in W.P. No. 16237, 16517 and 16272 of 1994.

WITH

Writ Petition (C) Nos. 119-20 of 1995 .

Under Article 32 of the Constitution of India.

A.K. Ganguli, R. Keruppan, T. Raja, K.K. Mani, M. Kalyanasunderam, M.A. Krishna Moorthy and V. Krishnamurty for the appearing parties.

The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. Tamil Nadu Entertainment Tax Act, 1939 was enacted to impose the tax on entertainments. By Act 37 of 1994 the Act was amended to bring within its purview what is called 'cable television'. The expression 'cable television' is defined inclause 2-B of Section 3. The definition reads:

> "Cable Television' means a system organised for television exhibition by using a video cassette or disc or both, recorder or palyer of similar such apparatus on which pre-recorded video cassettes or discs or both are played or replayed and the films or moving pictures or series of pictures which are viewed and heard on the television receiving set at a residential or non-residential place of a connection holder."

A The expression "television exhibition". occurring in the above definition, is defined in clause (11) of Section 3 in the following words:

> "Television exhibition'means an exhibition with the aid of any type of antenna with a cable net-work attached to it or cable television, of a film, or moving picture or series of
B moving pictures, by means of transmission of television signals by wire where 'subscribers' television sets at residential or non-residential place are linked by metallic coaxial cable or ontic fibre cable to a central system called the head-end."

C The expression "entertainment" is defined in Clause (4) of Section 3 thus:

> "Entertainment' means a horse race or cinematograph exhibition to which persons are admitted on payment or television exhibition for which persons are required to make
D payment by way of contribution, or subscription,or installation or subscription, or installation or subscription, or installation or connection charges or any other charges collected in any manner whatsoever.
>
> E Explanation—For the purposes of this clause and other provisions of this Act, 'Cinematograph exhibition' includes exhibition of film on Television screen through Video Cassette Recorder and through cable television network'."

Section 4-E is the charging section so far as cable television is
F concerned. Sub-section (1) thereof provides :

> "(1) Notwithstanding anything contained in sections 4 and 7, there shall be levied and paid to the State Government a tax hereinafter referred to as the entertainments tax calculated
G at forty percent of the amount collected by way of contribution or subscription or installation or connection charges or any other charges collected in any manner whatsoever for television exhibition."

A number of writ petitions were filed in the Madras High Court
H challenging the validity of the Amendment Act. The grounds of challenge,

which are reiterated before us, are the following: A

(1) The State Legislature has no legislative competence to enact the Amendment Act inasmuch as the subject matter of the enactment falls exclusively within the province of Parliament i.e., list 1 of the Seventh Schedule to the Constitution. B

(2) The impugned Act is of no effect since the field is already occupied by Cable Television Net-work (Regulation) Ordinance 9 of 1994 issued by President of India and the subsequent enactment made by Parliament replacing the ordinance. C

(3) The Amendment Act is violative of the freedom of speech and expression guaranteed to the petitioners by Article 19(1)(a) of the Constitution.

(4) The Amendment Act is a colourable piece of legislation. The tax in truth and effect is a tax on education inasmuch as the bulk of the programmes shown on cable television are educative programmes. The entertainment constitutes less than 10 per cent of the programmes shown by them. D

(5) The Amendment Act is violative of Article 14 of the Constitution since it does not levy the tax on Doordarshan and other establishments and associations (like star-hotels and multi-storey housing complexes) providing entertainment through dish antennas. E

(6) The tax is not on public entertainment but on private enjoyment i.e. , on people having entertainment sitting in their homes. F

(7) The rate of tax is prohibitive and is designed to kill the cable television in the interest of cinema theatres.

The defence of the State, in addition to disputing each of the above contentions, was that since the cable television is akin to cinema entertainment—though provided in a different manner, taking advantage of technological advancements—it is treated on par with cinema entertainment in the matter of levy of entertainment tax. If one is good and unexceptionable, so is the other, they say. G H

A The High Court has dealt with each of these contentions advanced by the writ petitioners separately and exhaustively and rejected each of them. Since we agree with the reasoning and conclusions arrived at by the High Court on all the issues, we think it unnecessary to deal with the above submissions except contentions No. 3, 4, and 7. Leave granted in all the special leave petitions.

B

The submissions of the learned counsel for the appellants (with respect to contentions 3, 4, and 7 referred to above) are to the following effect:- The appellants not only show films on their net-work using video-cassette/disc and recorder but also relay the programs broadcast by Doordarshan, B.B.C., C.N.N., Star T.V. and other similar T.V. net-works. C Most of the programmes shown by them are educative in nature. The entertainment part is hardly 10 per cent. In any event providing entertainment is also part of freedom of speech and expression. By levying tax at the rate of 40 per cent of the appellants' collections, the State is casting an unbearable burden upon the appellants. It is not possible for the appellants to survive in business of providing entertainment if they are D made to pay tax at the said rate. The immediate and direct effect of taxation at the said rate is to deprive the appellants of their fundamental right of freedom of speech and expression. It is really being done to help the cinema operators, whose business is said to have been adversely affected by the entry of cable television. Even if some films are shown by the appellants, that does not detract from the fact that to a substantial degree, E the progammes relayed by them are educative and informative in nature. Exhibition of films is providing entertainment. Providing entertainment is also a mode of exercise of their freedom of speech and expression—and that cannot be taxed. As a matter of fact, they perform the same function as that of Doordarshan and yet they are being subjected to prohibitive rate of taxation while Doordarshan goes sest free, say the counsel.

F

For a proper appreciation of the appellants contentions, it is necessary to examine the nature of the activity carried on by the appellants. The appellants are carrying on the business of providing entertainment. Their main activity is to show films and other material using the video-cassettes G or disc with the help of a V.C.R., disc player or a similar apparatus. By means of cables, the T. V. sets in the homes of the subscribers are linked to their apparatus with a view to enable the subscribers to receive the programmes relayed by the appellants. For this service, each subscriber is charged a particular amount every month. This is their business. It may be true that providing entertainment is a form of exercise of freedom of H speech and expression. It is quite likely that they also relay the programme

broadcast by Doordarshan another T.V. net-works and some of them may be informative in nature or educational in character but the fact remains that their activity is a combination of two rights i.e., business and speech—sub-clauses (g) and (a) of clause (1) of Article 19. There is no reasons why the business part of it cannot be taxed. If tax can be lavied upon entertainment provided by cinema, if taxes can be levied upon the Press, it is ununderstandable why the appellants' activity cannot be taxed. Certainly, the appellants cannot claim that their activity is of more significance to society than that of the Press. Where the freedom of speech gets intertwined with business it undergoes a fundamental change and it's exercise has to be balanced against societal interests. In *Secretary, Ministry of Information and Broadcasting, Government of India & Others* v. *Cricket Association of Bengal & Others,* [1995] 2 SCC 161 one of us (B.P. Jeevan Reddy, J.) stated the proposition, flowing from the decided cases, in the following words: "Providing entertainment is implied in freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution subject to this rider that where speech and conduct are joined in a single course of action, the free speech values must be balanced against competing societal interests." (at age 297).

Even with respect to the freedom of Press, this Court said in *Express Newspapers* v. *Union of India,* [1985] 1 SCC 641:

> "Newspaper industry enjoys two of the fundamental right, namely the freedom of speech and expression guaranteed under Article 19(1)(a) and the freedom to engage in any profession, occupation, trade, industry or business guaranteed under Article 19(1)(g) of the Constitution, the first because it is concerned with the field of expression and communication and the second because communication has become an occupation or profession and because there is an invasion of trade, business and industry into that field where freedom of expression is being exercised. While there can be no tax on the right to exercise freedom of expression, tax is livable on profession, occupation, trade, business and industry. Hence tax is livable on newspaper industry. *But when such tax transgreses into the field of freedom of expression and stifles that freedom, it becomes unconsitutional. As long as it is within reasonable limits and does not impede freedom of expression it will not be contravening the limitation of Article 19(2).* The delicate task of determining when it crosses from the area of profession, occupation, trade, business or industry

A into the area of freedom of expression and interferes with that freedom is entrusted to the courts."

In other words, only when taxes are levied not for raising revenues but for killing the appellants' business, can they legitimately complain.

B The Court also quoted with approval, in the said decision, the following statement of law in Corpus Juris Secundum (Vol.16) says at page 1132:

> "213(13) Taxing and Licensing.—The constitutional
> C guaranties of freedom of speech and of the press are subject to the proper exercise of the government's power of taxation, and reasonable license fees may be imposed on trades or occupations concerned with the dissemination of literature or ideas.
>
> D As a general rule, the constitutional guaranties of freedom is speech and of the press are subject to the proper exercise of the government's power of taxation, so that the imposition of uniform and non-discriminatory taxes is not invalid as applied to persons or organisations engaged in the dissemination of ideas through the publication or distribution
> E of writing. The guarantee of freedom of the press does not forbid the taxation of money or property employed in the publishing business, or the imposition of reasonable licenses and license fees on trades or occupations concerned with the dissemination of literature or ideas."

F Dealing with the power of the State to levy taxes, the Court observed: "Taxation is the legal capacity of sovereignty for one of its governmental agents to exact or impose a charge upon persons or their property for the support of the government and for the payment for any other public purposes which it may constitutionally carry out."

G In this view of the matter, the only question is whether the level of taxation is not within reasonable limits and whether it's incidence is such as to disable the appellants' from exercising their free speech right. Though the appellants' have alleged that the tax imposed is too heavy and is intended to drive them out of their business with a view to help the cinema theatres,
H no material has been placed before us to substantiate the sad averment.

The respondent's case is that the cable television has taken the place of cinema. It has replaced the cinema to a certain degree. The cable television is performing the very same function as is performed by the cinema. Cinema also provides entertainment. It also provides educational programmes. Indeed according to the learned counsel for the state, major chunk of the programmes shown on cable television are pure and simple entertainment and that they are mainly engaged in showing films which are broadcast either by T.V. net-works or relayed by the appellants with the help of a V.C.R. Counsel complained that some of the programmes shown by the appellants are having a deleterious effect upon the young and impressionable. With a view to promote their business, counsel submitted, the appellants are showing programmes designed to cater to base instincts and vulgar tastes. It is accordingly submitted that the rate of entertainment tax levied upon cable television at the same level and on the same par as the entertainment tax levied upon cinema theatres is neither unreasonable nor excessive. It is submitted that the levy of entertainment tax at 40 per cent of the collections is no higher than the rate of tax levied upon the cinema. It is also brought to our notice that the rate of taxation has since been brought down to 20 per cent, If the levy of entertainment tax at the rate of 40 per cent or thereabouts on the cinema theatres is not impermissible, it is submitted, the levy of entertainment tax at the same or lesser rate on cable television cannot also be held to be bad.

We are inclined to agree with the submission of the learned counsel for the State of Tamil Nadu. The reason given by the State for imposing tax at the rate of 40 per cent is duly explained by the State and we do not see any flaw in it. Since the appellants also carry on business it is their duty to share the burden of the State by paying taxes like any other business. The entertainment tax is an indirect tax. It is meant to be and is passed on to the consumer i.e., subscriber. In the case of indirect taxes, levy at more than 100 per cent of the value of the goods is not unknown e.g. , in the case of customs and central excise duties. As a matter of fact, even in the case of direct taxes, levy at a rate higher than 50% is a regular feature. Of course, these are instances not involving free speech right and stand upon a different plane.

We are also unable to see any substance in the grievance that taxes are only levied upon them and not upon the Doordarshan. We do not think that there can be any comparison between Doordarshan and the appellants. Doordarshan is a governmental organisation which is supposed to act in furtherance of public interest. It is not a business carried on by

A the Government. The revenues collected by it by permitting advertisements are only intended to defray part of the huge expenditure the Government incurs on establishing and maintaining the broadcasting system throughout the country. By no stretch of imagination can the appellants claim any similarity with Doordarshan.

B For the above reasons the appeals and writ petitions fail and are dismissed. There shall be no order to costs.

V.S.S. Appeals and Petitions dismissed.