



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

TUESDAY, THE 18TH DAY OF JUNE 2024 / 28TH JYAISHTA, 1946

WP(C) NO. 31296 OF 2017

PETITIONER/S:

JTPAC
A UNIT OF THE CHOICE FOUNDATION, CHOICE SCHOOL
CAMPUS, NADAMA EAST, TRIPUNITHURA, KOCHI 6823012,
REPRESENTED BY ITS GENERAL MANAGER (FINANCE AND
ADMINISTRATION) XAVIER GREGORY

BY ADVS.
SRI.K.I.MAYANKUTTY MATHER
SRI.R.JAIKRISHNA

RESPONDENT/S:

- 1 MARADU MUNICIPALITY
MARADU, ERNAKULAM, 682304, REPRESENTED BY ITS
SECRETARY
- 2 SECREARY
MARADU MUNICIPALITY, MARADU, ERNAKULAM 682304
- 3 MUNICIPAL COUNCIL
MARADU MUNICIPALITY, MARADU, ERNAKULAM 682304,
REPRESENTED BY ITS CHAIR PERSON

BY ADVS.
SRI.T.R.RAJAN SC,MARADU MUNICIPALITY
SRI.T.R.RAJAN SCMARADU MUNICIPALITY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
18.06.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



'C.R.'

JUDGMENT

The petitioner is a performance arts centre engaged in conducting various events. On 14.10.2016, the petitioner proposed to conduct a music concert at Hotel Le Meridian which falls within the jurisdiction of the 1st respondent Municipality. The petitioner, accordingly, approached the 1st respondent and also produced 1020 tickets of Rs.600/- each for getting the stamp under the provisions of the Kerala Local Authorities Entertainment Tax Act, 1961 (hereinafter referred to as the 1961 Act) r/w the provisions of the Keral Local Authorities Entertainment Tax Rules, 1962 (hereinafter referred to as the 1962 Rules). On 4.10.2016, the petitioner was called upon to deposit entertainment tax at Rs.1,24,080/-, Service Cess of Rs.3102/- and deposit of Rs.50,000/- (totalling to an amount of Rs.1,77,182/-), on the 1020 tickets. Upon receipt of the above notice, the petitioner remitted the entire amount as is evident from the receipt which is on record as Ext.P1(a). Ext.P2 proceedings of the Municipality indicate that the permission was granted to the petitioner for conducting the event. Ext.P2 also records that a total sum of Rs.1,77,182/- had been paid by the petitioner. The 1020 tickets which were produced by the petitioner before the Municipality were also duly stamped. According to the petitioner, the petitioner could sell only 265 tickets and the



balance 755 tickets which remained unsold were surrendered to the 1st respondent along with a request for refund of the advance entertainment tax paid on the 755 unused tickets. The petitioner also sought for a refund of security deposit. However, the Municipality refunded only the security amount of Rs.50,000/-. As regards the claim for refund of entertainment tax on 755 unsold tickets the petitioner received Ext.P4 communication stating that the Municipality had decided to appropriate the amount of entertainment tax paid on the 755 unsold tickets to the Chairperson's Distress Relief Fund. Though the petitioner agreed to remit a sum of Rs. 10,000/- towards the Distress Relief Fund, the Municipality failed to refund the amount of entertainment tax paid on the 755 unsold tickets to the petitioner. An appeal filed by the petitioner before the Council of the Municipality was also dismissed prompting the petitioner to approach this Court seeking the following reliefs:-

“(a) Call for the records of the case leading to Exts.P4, P6 and P8 – proceedings and quash the same by means of a writ of certiorari or other appropriate writ or order;

(b) Issue a writ of mandamus or other appropriate writ or order directing the respondents to refund the advance entertainment tax paid by the petitioner for 755 unused tickets of the music concert conducted by the petitioner on 14.10.2016.

(c) Issue a writ of mandamus or other appropriate writ or order forbearing the respondents from appropriating the advance entertainment tax paid by the petitioner for 755 unused tickets towards the Chair person's Distress Relief Fund.”

2. Sri. Anand Geo, the learned counsel appearing for the



petitioner vehemently submits that, going by the provisions of Section 3 of the 1961 Act and the definitions of 'admission' and 'admission to entertainment' in sub section (1) of Section 2 and sub section (2) of Section 2 of 1961 Act, the entertainment tax under the 1961 Act could only be on the tickets that had been sold and the petitioner was entitled to a refund in respect of the tax paid on the unsold tickets. He also placed reliance on a Full Bench Judgment of this Court in ***Municipal Council, Kottayam v. K. Mahadeva Iyer; 1970 KLT 577*** and particularly to an observation in paragraph 6 of the above said judgment which also indicates that the petitioner is entitled to a refund of the entertainment tax paid on the unsold tickets. The learned counsel also placed reliance on the provisions of Art.265 of the Constitution of India to contend that the Municipality had no authority whatsoever to transfer the tax paid on unsold tickets to the Chairperon's Distress Relief Fund. It is submitted that the tax can be levied only by authority of law and there was no authority under law to transfer the entertainment tax paid by the petitioner on the unsold tickets to the Chairperson's Distress Relief Fund.

3. The learned counsel appearing for the respondent Municipality submits that, when entertainment tax has been paid in advance, it is open to the Municipality to deny the claim for refund on the ground that the Council of the Municipality had decided to transfer the amount to the Chairperon's Distress Relief Fund. It is submitted



that the petitioner has no statutory right to obtain refund of the amounts remitted by him towards entertainment tax. It is submitted that there is no illegality in the impugned orders and the writ petition is liable to be dismissed.

4. The learned counsel appearing for the petitioner, in reply, would refer to provisions of Rule 19 of the 1962 Rules to contend that when the stamps are returned without having been cut, torn, defaced, diminished or otherwise spoilt or rendered unfit, the value of the stamps has to be repaid to the proprietor of any entertainment after deducting 5 naya paise for each rupee or portion of a rupee on the aggregate value of the stamps.

5. Having heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the respondent Municipality, I am of the view that the petitioner is entitled to succeed. Section 3 of 1961 Act is the charging Section. The provisions of Section 3 of the 1961 Act read as follows:-

“3. General provisions regarding the levy of the tax and the rate of tax. —Any local authority may levy a tax (hereinafter referred to as the entertainments tax) at a rate not less than ten per cent and not more than twenty five per cent on each payment for admission to any entertainment.”

The word 'admission' is defined in Section 2(1) of the 1961 Act as under:-

“ 'admission' includes admission as a spectator or as one of an audience and admission for the purpose of amusement by taking part in an entertainment:”



The term 'admission to an entertainment' is defined in Section 2 (2) of the 1961 Act as under:-

“ 'admission to an entertainment' includes admission to any place in which the entertainment is held:”

The definitions of 'admission' and 'admission to an entertainment' as contained in sub sections (1) and (2) of Section 2 r/w provisions of Section 3 of the 1961 Act indicate that tax was payable on an 'admission' and the petitioner was entitled to refund of the entertainment tax paid on the unsold tickets. Rule 19 of the 1962 Rules provide as under:-

“19. The local authority shall repay to the proprietor of any entertainment, the value of stamps that are returned by him without having been Cut, torn, defaced, diminished or otherwise spoiled or rendered unfit after deducting 5 naya paise for each rupee or portion of a rupee on the aggregate value of the stamps and may reissue them for their face value.”

A Full Bench of this Court in ***Municipal Council, Kottayam*** (***supra***), after referring to Rule 19 of the 1962 Rules held as follows:-

“6.Although the entire procedure is not so fully set out in S.5, it is clearly revealed if the section is read with S.6 and with the rules in Part III particular reference may be made to R.16 which requires the proprietor to keep a register of entertainments tax stamps bought by him and a register of tickets sold by him, and to R.19 which requires the local authority to repay to the proprietor the value of unused and unspoiled stamp returned by him after a small deduction, a provision similar to the provisions for the refund of the value of unused court fee or general stamps.”

The learned counsel for the petitioner is also right in contending that the tax could be imposed or collected only by authority of law and since



the provisions of the charging section in the 1961 Act clearly indicate that the entertainment tax as per 1961 Act could be levied only on the number of tickets that had actually been sold, any other appropriation of the amounts paid as tax would fall foul of Art.265 of the Constitution of India.

In the light of the above findings, the writ petition is allowed. The 1st respondent Municipality shall allow the claim of the petitioner for refund of tax on the unsold tickets in accordance with the provisions of Rule 19 of the 1962 Rules. Exts.P4, P6 and P8 communications will stand quashed. Since the petitioner has already committed to pay an amount of Rs.10,000/- towards the Chairperson's Distress Relief Fund, it will be open to the respondent Municipality to pay the amount to be refunded to the petitioner on the unsold tickets after deducting an amount of Rs.10,000/-.

Sd/-

GOPINATH P.

JUDGE

acd



APPENDIX OF WP(C) 31296/2017

PETITIONER EXHIBITS

EXHIBIT P1 TRUE COPY OF THE NOTICE ISSUED BY THE 2ND RESPONDENT DATED 04.10.2016

EXHIBIT P1 A TRUE COPY OF THE RECEIPT EVIDENCING THE PAYMENTS MADE BY THE PETITIONER TO THE 1ST RESPONDENT DATED 06.10.2016

EXHIBIT P2 TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT DATED 05.10.2016

EXHIBIT P3 TRUE COPY OF THE REQUEST LETTER GIVEN BY THE PETITIONER TO THE REVENUE OFFICER OF THE 1ST RESPONDENT DATED 19.10.2016

EXHIBIT P4 TRUE COPY OF THE LETTER ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER DATED 06.02.2017

EXHIBIT P5 TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT DATED 09.02.2017

EXHIBIT P6 TRUE COPY OF THE LETTER ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER DATED 06.03.2017

EXHIBIT P7 TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE COUNCIL FOR THE MARADU MUNICIPALITY DATED 08.03.2017

EXHIBIT P8 TRUE COPY OF THE LETTER ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER DATED 23.05.2017