

---

It will be noticed that the word 'company' includes a firm or other association and the same test must apply to a director incharge and a partner of a firm in charge of a business. It seems to us that in the context a person 'incharge' must mean that the person should be in over all control of the day today business of the company or firm. This inference follows from the wording of Section 23C(2). It mentions director, who may be a party to the policy being followed by a company and yet not be incharge of the business of the company. Further it mentions Manager, who usually is incharge of the business but not in over all charge. Similarly, the other officers may be in charge of only some part of business.

(13) Keeping in view the above observations, and from the evidence in the present case it can be concluded that the Managing Director and Chairman of the Company who were in over all control of the day-to-day business of the Company, could have been held to be liable and not S.N.C. Bakshi and D. P. Gupta as they were neither incharge of the Company nor were acquainted with the day-to-day business of the company.

(14) Considering all the pros and cons of the matter, we have come to the conclusion that this appeal fails and the same is hereby dismissed.

---

R.N.R.

(FULL BENCH)

Before :—A. L. Bahri, Ashok Bhan and V. K. Bali, JJ.

SANDEEP GILHOTRA,—Petitioner.

versus

STATE OF PUNJAB AND ANOTHER,—Respondents.

Civil Writ Petition No. 8675 of 1990.

25th February, 1993.

*Punjab Municipal Act, 1911—Ss. 61 and 62—Municipal Account Code, 1930 as amended.—vide notification, 1985—Rls. 1, 17, 18 of Chapter VII—Inposition of show tax and entertainment tax on cinemas—Municipal Committee proposing to levy such taxes by*

---

---

*resolution—Committee after inviting objections forwarding proposal to State Government—State Government endorsing resolution by issuing separate notifications for imposition of show and entertainment tax—Notifications challenged by cinema owners as unconstitutional and contrary to Rules, 1911 on the ground of non-specifying of persons chargeable to tax and further that no machinery for assessment to tax provided—Validity of notifications—Held, persons liable to pay show and entertainment tax and methods of framing assessment not required to be mentioned in notifications—Persons and method of assessment is laid down in Chapter VII, Rules 17 and 18 of Municipal Account Code—Claim of refund of entertainment tax collected prior to 1985 amendment can not be allowed—Burden of tax passed on to cinema goers—Refund will amount to unjust enrichment.*

*Held*, Rule 17 of Chapter VII of Code provides that every person running or maintaining a cinema, theatre, drama, carnival or circus shall file a return in Form T.S. 12 every week showing the sale of tickets and the entertainment tax collected by him, on behalf of the Corporation or the Committee, as the case may be, from such tickets. Rule 18 of Chapter VII of the Account Code provides that every person running or maintaining a cinema shall file a return in Form T.S. 13 every week showing the number of shows held by the management and shall deposit the show tax on prescribed rates against receipt in Form G. 8 and shall incorporate the details of receipt in return. From these two rules, it is clear that the person who is made liable to pay the tax has been identified. The method of collection has also been specified. A Form has been prescribed for filing the return of entertainment tax and show tax, the duration within which such return is to be filed has also been mentioned, the authority which is to frame the assessment and resolve the dispute has been provided in Rule 1 of Chapter VII of the Account Code. From a combined reading of these rules, it is clear that the person who has to pay the tax, the method of framing the assessment and the authority which has to frame the assessment has also been prescribed.

(Para 10)

*Held*, that the resolution passed by the Municipal Committee under S. 62(2) of the Act, making proposal for imposition of tax has not been placed on record. There is no challenge on facts in the writ petition that the resolution passed by the Municipal Committee proposing the imposition of show tax and entertainment tax did not define the class of persons or description of property proposed to be taxed, the amount or rate of tax to be imposed and the system of assessment to be adopted. From a reading of various sub-sections of S. 62 of the Act, it cannot be inferred that the Legislature required that the persons who are liable to pay tax have to be mentioned in the notification imposing the tax. It cannot further be inferred that the persons liable to pay the tax and the method of framing the

assessment has to be mentioned in the notification under sub-section (10) of S. 62 of the Act.

(Para 14)

*Held*, that it is not necessary that the method and machinery for framing the assessment has to be mentioned in the notification issued when a provision to that effect already exists in the Account Code wherein the provision has been made specifying the person liable to pay the tax and the method and machinery for framing the assessment and collection of the tax.

(Para 15)

*Held*, that the question of refund of tax collected prior to 1985 the year in which Rls. 17 and 18 of Chapter VII were incorporated in the Account Code does not arise. Petitioner had collected the entertainment tax consequent upon the purchase of ticket by the viewer and deposited the same with the Municipal Committee. There is no equity in favour of the petitioner to claim refund of this amount. The tax had been paid by the purchaser who had come to see the movie in the cinema hall which was collected by the person running the show on behalf of the Committee and ultimately was deposited with the Committee. The real person who may be entitled to refund if at all is the person who had paid the tax.

(Para 18)

STATE OF PUNJAB v. M/S JASWANT THEATRE (1990)8 PLR & S 439, and M/S V. P. THEATRE, KURALI v. STATE OF PUNJAB (1990)8 PLR&S 431.

(OVERRULED)

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

- (i) *that a writ of Mandamus may be issued by this Hon'ble Court thereby quashing the notifications Annexure P/1 and P/2 and P/3 and P/4,—vide which show tax and entertainment tax has been imposed by respondent No. 2 and that further direction may be issued to the respondent No. 2 not to recover the said taxes from the petitioner and respondent No. 2 may be directed to refund the tax which has been illegally collected from the petitioner or any other relief or direction may be issued by this Hon'ble Court, which is deemed appropriate under the circumstances of the case.*
- (ii) *that ad interim relief may be granted by this Hon'ble Court thereby restraining the respondent No. 2 from making recovery of the show tax and the entertainment tax till the decision of the writ petition.*
- (iii) *that filing of certified copies of annexures P/1 to P/7 may kindly be dispensed with.*

(iv) that service of advance notice of motion to the respondents may kindly be dispensed with.

(v) that costs of the petition may be allowed.

(This case was referred to a Larger Bench by Hon'ble Mr. Justice V. K. Jhanji,—vide his order dated 18th January, 1991 with the observation that conflicting view has been taken in the two different Judgments of this court on the same point. Larger Bench consisting of Hon'ble Mr. Justice A. L. Bahri, The Hon'ble Mr. Justice Ashok Bhan and Hon'ble Mr. Justice V. K. Bali, finally decided the case on 25th February, 1993.)

K. B. Bhandari, Sr. Advocate with Vivek Bhandari, Advocate,  
for the Petitioner.

T. C. Beri, DAG (Pb.), for respondent No. 1.

T. S. Doabia, Sr. Advocate with Ravinder Chopra, S. C. Khunger  
and Vinod Khunger, Advocates, for respondent No. 2.

#### JUDGMENT

*Ashok Bhan J.*

This judgment shall dispose of Civil Writ Petitions No. 8484, 8876, 8877 of 1989, 2552, 8675 and 8676 of 1990 as common questions of law and facts are involved in all these writ petitions. The facts are being taken from C.W.P. 8675 of 1990.

(2) Relying upon two Division Bench judgments of this Court reported as *State of Punjab v. M/s Jaswant Theatre* (1), *M/s Bhagwan Dass Bir Chand v. State of Punjab* (2), petitioner who is the owner and running a cinema within the municipal limits of Jalalabad challenged the imposition of *show tax* on the cinema,—vide notification dated 26th November, 1975 (Annexure P.1) and the revised rates of the *show tax* as per the amended notification (Annexure P.2) which came into force with effect from 15th February, 1983 and the imposition of the *entertainment tax* imposed,—vide notification dated 20th October, 1976 (Annexure P.3) and the amended notification enhancing the rates with effect from 15th February, 1983 (Annexure P.4) being unconstitutional and contrary to the provisions of the

---

(1) (1990)8 P.L.R.S. 439.

(2) C.W.P. No. 1993 of 1978 decided on 20th December, 1979.

Punjab Municipal Act, 1911 (hereinafter referred to as the Act) on the ground that these notifications do not provide as the person from whom the tax is to be charged as also the machinery for assessment of the taxes.

(3) All these cases came up for hearing before V. K. Jhanji, J. who,—*vide* his order dated 18th November, 1991, noticing an apparent conflict between two Division Bench judgments of this Court in *M/s. Jaswant Theatre's case* (supra) and *M/s V. P. Theatre, Kurali v. State of Punjab* (3), referred all these writ petitions for decision by a Larger Bench.

(4) Petitioner has challenged the imposition of show tax and *entertainment tax* on the ground that the notifications do not provide as to the persons who are liable to pay the said taxes and the machinery for framing the assessment or to settle the disputes which may arise at the instance of the concerned assessee, that the State Government had already levied entertainment and show taxes and the imposition of the taxes,—*vide* impugned notifications by the Municipal Committee amounts to double taxation and, therefore, the imposition of the said taxes by the Municipal Committee, was unconstitutional and that the procedure prescribed under sections 61 and 62 of the Act, had not been followed before imposing the taxes.

(5) In the written statement filed by the Municipal Committee, Jalalabad respondent No. 2, the averments made by the petitioner stand controverted. It has been stated that the person from whom the tax is to be charged and method and manner of assessment of *show tax* and *entertainment tax* need not be mentioned in the resolution passed by the Municipal Committee proposing the tax and further the same need not be mentioned in the notification issued by the Government. Separate rules applicable to all the Municipal Committees could be framed or Municipal Committees could frame separate bye laws applicable within the municipal limits simultaneously or even subsequently. It was stated that the person from whom the tax is to be charged, the manner and method to frame the assessment and to resolve the dispute between the assessee and the Municipal Committee have been provided in the Municipal Account Code, 1930 (hereinafter referred to as the Account Code.) Plea regarding double taxation was also controverted. It was stated

that Municipal Committee could levy the tax on any of the items on which the State Legislature was competent to levy the tax under the Constitution. The levying of tax by the State on the same item as well as by the Municipal Committee would not render the tax to be bad in law. Other allegations regarding the non observance of the procedure laid down in Sections 61 and 62 of the Act by the Municipal Committee before imposing the tax have also been denied.

(6) Sections 61 and 62 of the Act deal with the powers of the Municipal Committee in the State of Punjab to levy tax and the procedure to be followed therewith. Sections 61 and 62 of the Act are reproduced below :—

61. *Taxes which may be imposed.*—Subject to any general or special orders which the State Government may make in this behalf, and to the rules, any committee may, from time to time for the purposes of this Act, and in the manner directed by this Act, impose in the whole or any part of the municipality any of the following taxes, namely :—

(1) (a) a tax payable by the owner, on buildings and lands:—

(i) not exceeding 15 per centum of the annual value,

(ii) not exceeding one anna, per square yard of the ground area, or

(iii) not exceeding three rupees, per running foot of frontage in streets or bazars :

Provided that in the case of lands and buildings occupied by tenants in perpetuity, the tax shall be payable by such tenants ;

(b) a tax on persons practising any profession or art or carrying on any trade or calling in the municipality.

*Explanation.*—A person in the service of the Government or person holding an office under the State Government or the Central Government or a local or other public authority shall be deemed to be practising a profession within the meaning of this sub-clause;

- (c) a tax payable by the owner, on all or any vehicles other than motor vehicles animals used for riding, draught or burden, and dogs, when such vehicles, animals used as aforesaid, and dogs are kept within the municipality;
- (d) a tax, payable by the employer, on menial domestic servants;
- (e) a tax, payable by the occupier of any buildings in respect of which the committee has, in exercise of the powers conferred by sections 159 to 165 of this Act, undertaken the house scavenging;
- (ee) in addition to the tax imposed under clause (a) scavenging tax, payable by the occupier, on buildings and lands of such percentage of the annual value thereof as the State Government may, by notification declare to be reasonable for providing for the collection, removal and disposal by the committee of all filth and polluted and obnoxious matter from latrines, urinals, cess pools and for efficiently maintaining and repairing the municipal drains constructed or used for the reception or conveyance of such filth or polluted and obnoxious matters;
- (f) a tax payable by persons presenting building applications to the committee :

Provided that a committee shall not impose any tax without the previous sanction of the State Government when :—

- (i) it consists of members less than three fourths of whom have been elected, or
- (ii) its cash balances have, at any time within the three months preceding the date of the passing of the resolution imposing the tax, fallen below Rs. 20,000 or one tenth of the income accrued in the previous financial year whichever amount shall be less.
- (2) Save as provided in the foregoing clause, with the previous sanction of the State Government any other tax which State Legislature has power to impose in the State under the Constitution.

(3) Omitted.

Nothing in this section shall authorise the imposition of any tax which the State Legislature has no power to impose in the State under the Constitution :

Provided that a committee which immediately before the commencement of Constitution was lawfully levying any such tax under this section as then in force, may continue to levy that tax until provision to the contrary is made by Parliament.

*Explanation* :—In this section “tax includes any duty, cess or fee.”

## SECTION 62

“62. Procedure to impose taxes (1) A committee may, at a special meeting, pass a resolution to propose the imposition of any tax under section 61.

(2) When such a resolution has been passed the committee shall publish a notice, defining the class of persons or description of property proposed to be taxed, the amount or rate of the tax to be imposed, and the system of assessment to be adopted;

(3) Any inhabitant objecting to the proposed tax may, within thirty days from the publication of the said notice, submit his objection in writing of the committee, and the committee shall at a special meeting take his objection into consideration.

(4) If the committee decides to amend its proposal or any of them, it shall publish amended proposals along with a notice indicating that they are modification of those previously published for objection.

(5) Any objections which may within thirty days be received to the amended proposals shall be dealt with in the manner prescribed in sub-section (3).



- 
- (6) When the committee has finally settled its proposals it shall, if the proposed tax falls under clauses (b) to (f) of sub-section (1) of section 61 direct that the tax be imposed, and shall forward a copy of its order to the effect through the Deputy Commissioner to the State Government and if the proposed tax falls under any other provision it shall submit its proposals together with the objection if any made in connection therewith to the Deputy Commissioner.
- (7) If the proposed tax falls under clause (a) of sub-section (1) of section 61, the Deputy Commissioner, after considering the objections received under sections (3) and (5) may either refuse to sanction the proposals or return them to the committee for further consideration, or sanction them without modification or with such modification not involving an increase of the amount to be imposed, as he deems fit, forwarding to the State Government a copy of the proposals and his order of sanction, and if the tax falls under sub-section (2) of section 61, the Deputy Commissioner shall submit the proposals and objections with his recommendations to the State Government.
- (8) The State Government on receiving proposals for taxation under sub-section (2) may sanction or refuse to sanction the same or return them to the committee for further consideration.
- (9) Omitted.
- (10) (a) when a copy of order under sub-section (6) and (7) has been received; or
- (b) when a proposal has been sanctioned under sub-section (8) the State Government shall notify the imposition of the tax in accordance with such order or proposal, and shall in the notification specify a date not less than one month from the date of notification, on which the tax shall come into force;
- (11) A tax leviable by the year shall come into force on the first day of January or on the first day of April or on the first day of July, or on the first day of October in any year, and if comes into force on any other than the first day of the year by which it is leviable shall be leviable by the quarter till the first day of such year than next ensuing.

---

(12) A notification of the imposition of a tax under this Act shall be conclusive evidence that the tax has been imposed in accordance with the provisions of the Act.”

(7) Another relevant provisions of the Statute which would have bearing are Rule 1, 17 and 18 of Chapter VII of the Municipal Account Code 1930, which are reproduced below :—

“VII. 1. Appointment and duties of tax Superintendent Tax Inspectors etc. (a) In every corporation in which any tax other than the octroi is imposed the Government may appoint a tax superintendent and one or more assistant tax Superintendents. The Corporation may appoint such number of tax inspectors, tax clerks or tax collectors as may be necessary for the assessment of such taxes.

(b) In every committee, in which any tax other than octroi is imposed, the Government may appoint a tax superintendent one or more assistant tax Superintendent, and as such number of tax inspectors, as it may deem necessary for the assessment and collection of such taxes. The committee may appoint such number of tax clerks or tax collectors as may be necessary for the collection of such taxes :—

Provided that the Chief Sanitary Inspector or Sanitary Inspector of any Corporation or committee shall not be required to perform the duties of tax superintendents, tax inspectors, tax clerks or tax collectors;

(2) The tax Superintendent, in addition to any other duties imposed upon him by these rules, shall be responsible generally for the assessment and collection in accordance with these rules of toll taxes other than octroi and of such other fees and dues as the Corporation for committee may direct and for the proper discharge of their duties by assistant tax superintendent, Tax Inspectors, Tax Clerk and Tax Collectors;

(3) The assistant tax superintendent shall exercise such functions and duties as may be entrusted to him by the Executive Officer except that the duties imposed upon the superintendent,—vide rules VII.2(1) and VII.5(3) shall not be allotted to him.

- (4) The tax inspectors, in addition to any other duties imposed upon them by these rules, shall be responsible for the proper discharge of their duties by the Tax Clerk and Tax Collectors, attached to their respective circles, and it shall be their duty to see that all persons liable to a tax by reason of their residence or ownership or occupancy of property within their respective circles are assessed for payment of such tax, and to report to the Tax Superintendent all cases in which such persons have escaped assessment or have been under assessed and all charges of ownership or occupation of property, new construction or alterations of buildings or fresh acquisitions of animals or vehicles effecting the liability of such persons to taxation.

“VII 17. *Collection of Entertainment Tax.*—Every person running or maintaining a cinema, theatre, drama, carnival or circus shall file a return in Form T.S. 12, every week showing the sale of tickets and the entertainment tax collected by him, on behalf of the corporation or the Committee, as the case may be from such tickets. The tax shall be deposited against receipt in Form G.8 and the details thereof shall be entered in the return.

“VII 18. *Collection of Show Tax.*—Every person running or maintaining a cinema, theatre, drama, carnival or circus shall file a return in Form T.S. 13 every week showing the number of shows held by the management and shall deposit the show tax on prescribed rates against receipt in Form G.8 and shall incorporate the details of receipt in return.

It has not been disputed that Rules 1, 17 and 18 of Chapter VII of the Account Code are applicable to all the Municipal Committees and Municipal Corporations in the State of Punjab. Rules 17 and 18 of Chapter VII of the Account Code were substituted, vide notification issued by the State Government on 25th October, 1988.

(8) Section 61 of the Act authorises a Municipal Committee to impose taxes. Section 61(1) of the Act mentions various taxes which can be imposed by a Municipal Committee. Sub-section (2) of this section provides that the Municipal Committee can, with the previous sanction of the State Government impose any other tax which the State Legislature has the power to impose in the State of Punjab under the Constitution. A reading of sub-clause (2) of

section 61 of the Act, makes it clear that before imposition of a tax, sanction of the State Government is to be obtained by a Municipal Committee. It does not show that sanction of the State Government is to be obtained before initiating a resolution for imposing a tax. Sub-section (12) of section 62 of the Act provides that a notification for the imposition of a tax under this Act shall be conclusive evidence that the tax has been imposed in accordance with the provisions of the Act.

(9) Specific questions of law for opinion of the Larger Bench were not set out by the learned Single Judge while referring the dispute to a Larger Bench but the writ petitions as such were ordered to be placed before a Larger Bench for decision. During arguments, counsel for the petitioner framed the following four questions of law for decision of this Court which would determine the controversy in the writ petitions as such as well as resolve the conflict between the two Division Bench judgments of this Court in M/s Jaswant Theatre's case and M/s V. P. Theatre's case (supra) :—

- (1) Whether, under the provisions of sections 61(2) read with section 62(2) of the Act, it was mandatory for the Municipal Committee to mention in the proposal itself, the persons liable to pay the tax, rate of tax and the machinery for framing the assessment of show tax and the entertainment tax ?
- (2) Whether, it was mandatory for the State Government to provide in the notification issued under section 62 of the Act, itself, as to the persons liable to pay tax and the method and machinery for framing the assessment ?
- (3) That Rules 17, and 18 of Chapter VII of the Accounts Code, do not specify the persons liable to pay show tax and entertainment tax and further that these rules do not provide the machinery for framing the assessment of these taxes.
- (4) Whether, the Municipal Account Code, 1930 can be made applicable to the taxes imposed under section 61(2) of the Act ?

(10) Chapter VII of the Account Code, deals with the procedure of collection of tax other than the octroi in a Municipal Committee. From a perusal of Rule 1 of Chapter VII of the Account Code, it is evident that a Tax Superintendent is to be appointed in a Municipal Committee whether tax other than octroi is imposed. Further, Tax Inspectors are to be appointed for framing the assessment and collection of the taxes. Tax Superintendent has been made responsible for the assessment and collection of the taxes in accordance with the rules contained in Chapter VII of the Account Code. Against the assessment framed under these rules, appeal would lie to the Deputy Commissioner under Section 84 of the Act. Rule 17 of Chapter VII of the Account Code provides that every person running or maintaining a cinema, theatre, drama, carnival or circus shall file a return in Form T.S. 12, every week showing the sale of tickets and the entertainment tax collected by him, on behalf of the Corporation or the Committee, as the case may be, from such tickets. The tax shall be deposited against receipt in Form G.8 and the details thereof shall be entered in the return. A perusal of this rule makes it clear that the tax has been imposed upon the viewer buying the ticket, the person running or maintaining the cinema is to collect the tax on behalf of the Corporation and deposit the same against a receipt. Similarly under Rule 18 of Chapter VII of the Account Code provides that every person running or maintaining a cinema shall file a return in Form T.S. 13 every week showing the number of shows held by the management and shall deposit the show tax on prescribed rates against receipt in Form G.8 and shall incorporate the details of receipt in return. From these two rules, it is clear that the person who is made liable to pay the tax has been identified. The method of collection has also been specified. A Form has been prescribed for filing the return of entertainment tax and show tax, the duration within which such return is to be filed has also been mentioned, the authority which is to frame the assessment and resolve the dispute has been provided in Rule 1 of Chapter VII of the Account Code. From a combined reading of these rules, it is clear that the person who has to pay the tax, the method of framing the assessment and the authority which has to frame the assessment has also been prescribed.

(11) The main challenge of the petitioner in the writ petition is that the notification does not specify the persons liable to pay the tax and the method of framing the assessment and that unless the same is provided in the notification itself, the imposition of tax is

---

bad; that the provisions made in the Account Code regarding this at a later date would not either justify or validate the tax imposed.

(12) Counsel for the petitioner urged that under section 62(2) of the Act, a committee while passing the resolution to propose the imposition of any tax under section 61 of the Act, has to publish a notice, defining the class of persons or description of property proposed to be taxed, the amount or rate of the tax to be imposed, and the system of assessment to be adopted. He further argued that while issuing notification under section 62(1), the Government in the notification itself has to notify the persons liable to pay the tax and the method or machinery for framing the assessment. This argument of counsel for the petitioner covers Questions No. (1) and (2) framed in the earlier part of this judgment. It was argued that the provisions regarding the persons liable to pay the tax and the method or machinery for framing the assessment could not be provided by way of separate rules framed by the State such as Rules 1, 17 and 18 of Chapter VII of the Account Code or by individual Municipal Committee by framing the bye laws.

(13) We do not find any substance in this argument of the counsel for the petitioner. On fact, it may be clarified that the petitioner has nowhere stated that the proposal made by way of resolution by the Municipal Committee was not in accordance with Section 62(2) of the Act. The resolution moved by the Municipal Committee proposing to impose the tax has not been placed on the record for the scrutiny of the Court. In para 7, it has simply been stated that the Executive Officer made a proposal to the Administrator of the Municipal Committee, Jalalabad, that show tax be imposed on the shows in the cinema hall, which was accepted by the Administrator. In the next paragraph, it is stated that objections were invited by the Municipal Committee and some objections were filed which were rejected by the Administrator. It has not been stated that the resolution passed by the Municipal Committee proposing to impose the tax lacked in any particulars as envisaged in section 62(2) of the Act. This apart, section 62(1) of the Act states that the Committee at a special meeting may pass a resolution proposing the imposition of tax under section 62(2) of the Act. Sub-section (2) of section 62 provides that when such a resolution has been passed, the committee shall publish a notice, defining the class of persons or description of property proposed to be taxed, the amount or rate of the tax to be imposed, and the system of assessment to be adopted.

Sub-section (3) of section 62 of the Act provides that any inhabitant objecting to the proposed tax may, within thirty days from the publication of the said notice, submit his objection in writing to the committee; and the committee shall at a special meeting take his objection into consideration. After the decision of the objections, the committee has to forward its proposal to the State Government, which may sanction or refuse to sanction the same or return the proposal to the Committee for further consideration under Sub-section (8) of section 62 of the Act. On acceptances of the proposal under sub-section (8) of section 62, the State Government can issue notification under sub-section (10) of section 62 specifying a date not less than one month from the date of notification on which the liability to pay tax shall come into force. Sub-section (12) of the Act provides that a notification of the imposition of a tax under this Act shall be conclusive evidence that the tax under this Act has been imposed in accordance with the provisions of the Act.

(14) The resolution passed by the Municipal Committee under section 62(2) of the Act, making proposal for imposition of tax has not been placed on record. There is no challenge on facts in the writ petition that the resolution passed by the Municipal Committee proposing the imposition of show tax and entertainment tax did not define the class of persons or description of property proposed to be taxed, the amount or rate of tax to be imposed and the system of assessment to be adopted. From a reading of various sub-sections of section 62 of the Act, it cannot be inferred that the Legislature required that the persons who are liable to pay tax have to be mentioned in the notification imposing the tax. It cannot further be inferred that the persons liable to pay the tax and the method of framing the assessment has to be mentioned in the notification under sub-section (10) of section 62 of the Act. We are fortified in our view by the observations made by the apex Court in *Vallabhadas initiation and others v. Municipal Committee, Akola and another* (4). In that case the apex Court was considering a similar resolution to impose octroi by the Municipal Committee, Akola under C.P. and Berar Municipalities Act. The provisions of C.P. and Berar Municipal Act, were similar to the provisions of the Act, It was held by the Supreme Court that the words "System of Assessment" in section 67(2) of C.P. and Berar Municipalities Act, do not necessarily mean the whole procedure of taxation, i.e. imposition, collection and procedure in regard to collection and refunds. Contention raised in

---

(4) A.I.R. 1967 S.C. 198.

that case was that in the newspaper the rules which were published contained the articles to be taxed, the rate of taxes at which they were to be taxed but the draft rules in regard to System of Assessment were not published along with and, therefore, notification was bad in law. This contention was negated by the Supreme Court in para 6 of the aforesaid judgment by observing as under :—

“The High Court has pointed out that what was done was a sufficient compliance with the provisions of Section 67(2) and that the words “System of Assessment” meant only the stage of the imposition of the tax and not other stages as a whole. Sections 71, 76 and 85 as has been said above, deal with rules for assessment and for preventing evasion of taxes, rules for collection of taxes and rules for refund respectively, Read together these provisions of the Act support the decision of the High Court that the words “System of Assessment” do not necessarily mean the whole procedure of taxation i.e. imposition, collection and procedure in regard to collection and refunds. The rule also shows that what is to be affixed on the notice board and at conspicuous places of the town is the notice and not the draft rules relating to assessment and collection. In our opinion, there has been a compliance with the provision of Section 67(2) and that the publication of the rules relating to the rates at which the tax had been imposed was sufficient to comply with the provisions of the Act and the rules made thereunder. It is unnecessary to deal with the efficacy of sub-sections (7) and (8) of Section 67.”

(15) In this case, the Committee had passed a resolution proposing to levy tax, invited objections which were filed by few of the inhabitants and thereafter forwarded the resolution to the State Government proposing to levy tax. State Government after satisfying itself issued the impugned notification imposing the tax. From a reading of the notification (Annexure P.1) imposing the show tax, it can be deciphered that the tax imposed was on the cinema show and the rate of tax per show, was also specified. By implication the tax of a show of cinema has to be paid by the person running the cinema. Similarly, a perusal of notification (Annexure P.3),—*vide* which the entertainment tax was imposed, it is clear that the



entertainment tax was brought on sold cinema tickets, the burden of which was necessarily to fall on the person purchasing the ticket. The rate of the entertainment tax has been specified in the notification itself. Rule 1 of Chapter VII of the Account Code provides a complete machinery for framing the assessment. Rules 17 and 18 of Chapter VII of the Account Code, identify the person to be taxed, the method and machinery for framing the assessment. In our view, it is not necessary that the method and machinery for framing the assessment has to be mentioned in the notification issued when a provision to that effect already exists in the Account Code wherein the provision has been made specifying the person liable to pay the tax and the method and machinery for framing the assessment and collection of the tax consequently, the contention raised by the counsel for the petitioner stands rejected.

(16) We do not find any substance in the submission of counsel for the petitioner on question No. 3 as well. Counsel argued that rules 17 and 18 of Chapter VII of the Account Code, do not specify the persons liable to pay tax and the method and machinery for framing the assessment of show tax and entertainment tax. These rules clearly provide that person running or maintaining the cinema is liable to collect the entertainment tax from the viewer at a specified rate on the sale of ticket and file return in Form T.S. 12 every week showing the sale of tickets and the entertainment tax collected. The authority to frame the assessment has been specified under Rule 1 of Chapter VII of the Account Code. Similarly Rule 18 of the Accounts Code specifies the persons liable to pay show tax who is running or maintaining a cinema and the tax is imposed on the number of shows held by the management, Forms have been prescribed for filing the return every week. Tax collected has to be deposited on the prescribed rates against receipt in Form G.8 details of which have to be incorporated in the return of tax. For the reasons mentioned above, this contention of the petitioner is also rejected.

(17) The next question which is to be considered is whether the Municipal Account Code can be made applicable to the taxes imposed under section 61(2) of the Act. Counsel for the petitioner failed to show either in the interpretation of statute or by citing case law that the Account Code cannot be made applicable to the taxes imposed under section 61(2) of the Act. Section 61(1) of the Act

provides various taxes which can be imposed by a Municipal Committee. Under Section 61(2) Municipal Committee has been empowered to impose with the previous sanction of the State Government any other tax which the State Legislature has power to impose in the State under the Constitution. The procedure to impose tax has been provided in section 62 of the Act. Procedure to be adopted for imposing tax under sections 61(1) or 61(2) of the Act is to be the same that is, as provided under section 62(2) of the Act. Chapter VII of the Account Code provides the method and machinery for imposing a tax other than the octroi within the municipal committee. Counsel for the petitioner failed to substantiate his submission on this point and, therefore, the contention raised by him stands rejected.

(18) The next point to be considered in this case is that Rules 17 and 18 of Chapter VII of the Account Code came on the Statute Book by way of notification in the year 1985. The present writ petition was filed in the year 1990. Prayer made in this writ petition is that notifications Annexure P.1 to P/4 imposing show tax and entertainment tax be quashed and further a direction be issued to the respondents not to recover the said taxes from the petitioner coupled with a further prayer that respondent Municipal Committee be directed to refund the tax which has been illegally collected by it from the petitioner. We have already held that notifications imposing the tax cannot be quashed for the reasons stated specially in view of the rules framed under Chapter VII of the Account Code which provides the person liable to pay the tax and the method and machinery for framing the assessment. Counsel for the petitioner then argued that Rules 17 and 18 of Chapter VII of the Account Code were incorporated in the year 1985 and on the basis of these rules, the assessment framed after 1985, could be validated but the tax collected prior to 1985, would be bad as the person liable to pay tax and the method and machinery for framing the assessment had not been provided and consequently the petitioner is entitled to the refund of the tax collected from the date of its imposition till the year 1985. The question of refund does not arise. Petitioner had collected the entertainment tax consequent upon the purchase of ticket by the viewer and deposited the same with the Municipal Committee. There is no equity in favour of the petitioner to claim refund of this amount. The tax had been paid by the purchaser who had come to see the movie in the cinema hall which was collected by

the person running the show on behalf of the Committee and ultimately was deposited with the Committee. The real person who may be entitled to refund if at all is the person who had paid the tax. Petitioner has simply collected the tax on behalf of the Corporation/Municipal Committee. If this money is ordered to be refunded to the petitioner then it would amount to payment of undue premium to the petitioner as he would be getting the money which does not belong to him.

(19) Petitioner cannot claim refund of show tax and entertainment tax collected and paid between 1975 to 1985 on the ground of laches as well. The accounts for these years may not be available with the Municipal Committee and it would be difficult to calculate the amount for that period for making the refund as claimed.

(20) This brings us to the last point regarding the conflict noticed by the learned Single Judge while referring the case to a Larger Bench in *M/s Jaswant Theatre's case* (supra) and *M/s V. P. Theatre's case* (supra). In *M/s Jaswant Theatre's case* (supra) the writ petition had been filed in the year 1979 (C.W.P. No. 464 of 1979) which was decided in favour of the petitioner by a Single Judge on 27th March, 1987. Letters patent appeal (No. 263 of 1987) filed by the State was dismissed on 28th February 1990. It would be noticed that there was no delay in filing the writ petition. The learned Single Judge who decided *M/s Jaswant Theatre's case* (supra) at the first instance did not take into consideration Rules 1, 17 and 18 of Chapter VII of the Account Code. Before Letters Patent Bench, rules of the Account Code were brought to the notice of their Lordship, which were referred to and noticed by the Bench in para 14 of the judgment. The Division Bench noticed the rules but did not discuss their effect. In the later part of the judgment, there is no discussion of these rules. No opinion was rendered regarding the applicability of these rules. In *M/s V. P. Theatre's case* (supra) provisions of the Rules contained in Chapter VII of the Account Code were referred to. It was held that the method for making the assessment and to determine the dispute had been provided in Rule 1 of Chapter VII of the Account Code but unfortunately again it seems Rules 17 and 18 of Chapter VII of the Account Code, were not brought to the notice of the Bench. The contention raised by the petitioner in that case that there was no system provided for the assessment was upheld. It was held that neither the notification nor the rules provided the person liable to pay the tax and, therefore, relying upon *Bhagwan Dass's case* (supra) the tax

imposed was held to be bad in law and the notification was quashed. Viewed in this light, it would be appreciated that in fact there is not much conflict in the judgment rendered by this Court in *M/s Jaswant Theatre's case* (supra) and *M/s V. P. Theatre's case* (supra). Although there is not much conflict between these two judgments but with respect to the learned Judges of the Division Bench, we do not find ourselves in agreement with the reasoning adopted and conclusions reached in these two judgments and for the reasons stated in this judgment we over rule the same.

(21) For the reasons stated above, we find no merit in this writ petition and the same is dismissed. However, there will be no order as to costs.

R.N.R.

(FULL BENCH)

Before : J. S. Sekhon, A. P. Chowdhri & H. S. Brar, JJ.

BARJINDER SINGH,—Petitioner.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 15625 of 1991.

11th March, 1993.

*Code of Criminal Procedure, 1973 (II of 1974)—Ss. 95 & 96—Constitution of India, 1950—Arts. 14, 19 & 21—Objectionable news-items—Censorship—Constitutional validity of S. 95—Restrictions imposed by duly constituted Press Relations Committee under Chairmanship of Governor of State involving Editors and other representatives of various newspapers—Opportunity to give pre-decisional hearing before such imposition—Not necessary where effective remedy is available—S. 95 is constitutionally valid and intra-vires the Constitution—Reasonableness of restrictions—Determination thereof.*

Held, that it is not practicable to give an opportunity of being heard to the person concerned before passing the order of forfeiture under S. 95. In the nature of things the newspapers are engaged in a battle against time in ensuring the release of its edition to meet its commitment to the readers advertisers etc. The process of hearing involves a consideration and a decision of the various points to which the attention of the State Government may be invited by the person concerned. It involves application of mind and we are, therefore, of