

Durga Talkies and ors. Vs. State of Orissa and ors.

Durga Talkies and ors. Vs. State of Orissa and ors.

SooperKanoon Citation : sooperkanoon.com/525904

Court : Orissa

Decided On : Jan-20-1993

Reported in : AIR1993Ori107; 1993(I)OLR234

Judge : B.L. Hansaria, C.J. and ;S.K. Mohanty, J.

Acts : Orissa Entertainment Tax Act, 1946 - Sections 4, 5 and 5(2); [Constitution of India](#) - Articles 14 and 245

Appeal No. : Original Jurisdiction Case Nos. 550, 583, 790, 822, 1127, 1128, 1532, 1635, 3301, 3302, 3303, 3304,

Appellant : Durga Talkies and ors.

Respondent : State of Orissa and ors.

Advocate for Def. : Standing Counsel (C.T.), ;Addl. Standing Counsel (C.T.) and ;Govt. Adv.

Advocate for Pet/Ap. : Amalakrishna Ray, ;S. Roy, ;P. Mohanty, ;A. Mohanty, ;B. Misra, ;Akhil Mohapatra, ;B. Mahanti, ;P.C. Rout, ;G.C. Patnaik, ;H.N. Mall, ;Y. Das, ;A.K. Misra, ;S.K. Das and ;S.R. Jena, Advs.

Disposition : Petition dismissed

Judgement :

Hansaria, C.J.

1. The validity of SECTION 5(2) of the Orissa Entertainment Tax Act, 1946 (Orissa Act V of 1946) (hereinafter referred to as 'the Act'), which was inserted in the Act by the Amending Act, 19 of 1989 has been assailed in these petitions. The notification dated 30-12-1989 issued by the State Government in exercise of the power conferred by the abovementioned section of the Act has also been challenged. The questions of law raised being the same, all the petitions were heard together and are being disposed of by this common judgment.

2. Section 5(2) of the Act is closely connected with Sections 4, 4-A and 5(1) (the last provision as renumbered by the aforesaid Amendment Act). We may, therefore, read these provisions:--

'4. Tax on payment for admission to entertainments.-

Except as otherwise expressly provided in this Act there shall be levied and paid to the State Government, on all payments for admission to any entertainment, a tax (hereinafter referred to as the tax) at the following rates, namely:

xx xx xx xx xx 4-A(1). In the case of all cinematograph exhibitions, except those exempted under Section 8 from payment of tax there shall be levied and paid to the State Government a tax in respect of every show by the proprietor of the cinema house at the rate specified below :

xx xx xx xx xx 5. Composition and consolidated payment of tax.-

(1) The State Government may, on the application of the proprietor of any entertainment in respect of which the tax is payable under Section 4, allow the proprietor on such conditions as they may lay down -

(a) to compound the tax payable in respect of such entertainment for a fixed sum,
or

(b) to pay the amount of tax due by means of a consolidated payment at such percentage of the gross proceeds received by the proprietor on account of payments for admission to such entertainment and on account of the tax, as the State Government may fix.

(2) Notwithstanding anything contained in Sub-section (1), in the case of cinematograph exhibitions held in any theatre in any local area under a Municipal Council or a Notified Area Council constituted under the Orissa Municipal Act, 1950, there shall be levied and paid to the State Government a tax at such percentage, not less than twenty per centum or more than forty per centum of the gross collection capacity on every show, which shall be specified by the State Government by notification from time to time along with the names of the local areas and the conditions regulating such levy and payment of tax. Explanation -

For the purpose of this section 'gross collection capacity' in relation to cinematograph exhibition means the notional aggregate of all payments for admission to a show (inclusive of the Entertainment Tax and the surcharge and additional surcharge, if any, on the Entertainment Tax leviable under this Act), if all the seats or other accommodation in the theatre specified in the licence issued by the licensing authority under the Orissa Cinemas (Regulation) Act, 1954 were occupied by the spectators.'

(Emphasis ours)

3. The notification which is impugned is dated 30-12-1989 and reads as below :--

'GOVERNMENT OF ORISSA

FINANCE DEPARTMENT

NOTIFICATION

Bhubaneswar, dated the 30th Dec., 1989

No. CTE. 14/89. 45932/F. In pursuance of Sub-section (2) of Section 5 of the Orissa Entertainments Tax Act, 1946 (Orissa Act 5 of 1946), the State Government do hereby specify that there shall be levied and paid to the State Government a tax of twenty per centum of the gross collection capacity on every show in the case of cinematograph exhibitions held in any theatre in the local areas under the Municipal Councils/Notified Area Councils of Cuttack, Bhubaneswar, Puri, Berhampur, Sambalpur and Rourkela with the condition that

such tax shall be payable on an average of seventy shows per calendar month irrespective of number of shows exhibited during a month.

This notification shall be effective on and from the 1st day of January, 1990.'

By order of the Governor

B. B. Mishra

Joint Secretary to Government

4. The challenge is on these grounds:--

(1) Section 5(2) suffers from lack of legislative competence.

(2) It clashes with Sections 4 and 4-A.

(3) Valuable right of composition has been taken away by Section 5(2).

(4) Fixation of the number of shows at 70 by the notification is arbitrary.

(5) The tax is confiscatory in nature.

(6) The fixation of 20 per cent as the basis of calculation is violative of Article 14.

5. Ground No. 1: Lack of legislative competence.

The relevant legislative entry relating to the Act is 62 of List II of the Seventh Schedule which permits, inter alia, tax on entertainments. It has, however, been strenuously contended by Shri Das that the tax is visualised by Section 5(2) of the Act ceases to be a tax on entertainments and has become a tax either on income or on calling which is not within the competence of the State Legislature. This submission is refuted by Shri Patnaik for the Department.

6. The accepted principle to find out the subject-matter of an enactment is to apply the doctrine of pith and substance. Shri Das submits that if this doctrine is applied, as was done recently by the apex Court in *India Cement Ltd. v. State of Tamil Nadu*, AIR 1990 SC 85, it would become clear, because of the tax under Section

5(2) being on 'gross collection capacity', which expression has been given a special meaning by the Explanation to the section, that it is very indirectly connected with entertainment, but in reality it is a tax on income or calling. Strong reliance is placed on what was stated in paragraph 23 of India Cement's case. In that case, the imposition of cess on royalty was challenged which had been imposed by the State Legislature by defining land revenue to include royalty payable under the mining lease --imposition of land revenue being within the competence of the State Legislature. This was regarded as an artificial expansion of the term 'land revenue', and in paragraph 23, it was accepted that royalty which is indirectly connected with land cannot be said to be a tax directly on land. While accepting this submission of Shri Nariman, reference was made to Western India Theatres Ltd. v. The Cantonment Board, Poona Cantonment, AIR 1959 SC 582, in which the imposition in question was said to be entertainment tax which was distinguished from a tax on profession or calling.

7. As in the present case we are concerned with entertainment tax, it would be apposite to note what was stated in Western India Theatres. In that case, one of the questions for determination was whether the tax in question was a tax on entertainment (covered by Entry 50) or a tax relatable to matters specified in Entry 46 of the Government of India Act which related to taxes on profession, trade, calling and employment which could not exceed Rs. 100/- per annum under that Act and Rs. 240/- per annum under Article 276(2) of the Constitution. What was stated in paragraph 7 by the Constitution Bench in that judgment is relevant for our purpose. The tax was not regarded as a tax imposed for the privilege of carrying on any trade or calling. It was thereafter stated as below:

'It is a tax imposed on every show, that is to say, on every instance of the exercise of the particular trade, calling or employment. If there is no show, there is no tax. A lawyer has to pay a tax or fee to take out a licence irrespective of whether or not he actually practises. That tax is a tax for the privilege of having the right to exercise the profession if and when the person taking out the licence chooses to do so. The impugned tax is a tax, on the act of entertainment resulting in a show. In our opinion, therefore, Section 73 is a law with respect to matters enumerated in Entry 50 (which is parallel to Entry 62 in the case at hand) and not Entry 46 and

theBombay Legislature had ample power toenact this law.'

8. Let us now see whether the tax imposed by Section 5(2) of the Act can be said to be a tax on show or a tax on income/calling. Shri Patnaik for the Department, without being aware of what was stated in Western India Theatres' case, reference to which has been made in India Cement's case, which has been mentioned by Shri Das in his written submission filed on 13-1-1993 whereas the hearing of the cases was concluded on 7-1-1993, had submitted when the cases were being heard that Section 5(2) would not come into operation unless a show is held. He had then stated clearly that the theme of Section 5(2) is 'no show, no tax'. In such a situation, the tax becomes an entertainment tax as held in Western India Theatres' case.

9. Let us, however, see whether the stand taken by Shri Patnaik is borne out by the section read with the notification. A close look of the section shows that it is levied on gross collection capacity on 'every show'. In the notification it has been further stated that it would be in respect of every show 'held' in any theatre. Thus, it is clear that if both the provisions are read together there can be no tax if no show is held. So, Shri Patnaik's submission that Section 5(2) read with the notification states 'no show, no tax' is what the provisions really lay down.

10. This being the position, it has to be held that in pith and substance, the tax is on entertainment and not on notional income (or calling) as is the contention of the learned Counsel for the petitioners. We, therefore, hold that the Legislature was within its competence to enact Section 5(2) of the Act.

11. Ground No. 2 : Clash with Sections 4 and 4-A.

As to the clash between Section 5(2) andSection 4, Shri Patnaik submits that theopening part of Section 4 'Except as other-wise expressly provided in this Act' wouldshow that Section 4 is subject to expressprovision to the contrary, and, according tothe learned Counsel, Section 5(2) is such aprovision. This submission of Shri Patnaikdoes not appear to be tenable on the firstflush, because Section 5(2) has carved out anexception only from the field occupied bySub-section (1) of Section 5, because the openingwords of Section 5(2) are 'Notwithstandinganything

contained in Sub-section (1)'. Learned Counsel contends that Section 5(2) might have been placed after Sub-section (1) of Section 5, because that section deals with composition and consolidated payment of tax, whereas Section 5(2) has not contained a provision for composition, and it is because of this that this sub-section was incorporated as a part of Section 5 : It is urged that we may not give much weight to the placing of Sub-section (2), because this sub-section is also a charging section, as is Section 4, which would become apparent from the fact that this sub-section has stated that the tax contemplated by it shall be levied and paid to the State Government, which is the language of Section 4 also.

12. Shri Patnaik contends that the rules of interpretation of statutes would require us to construe the real purport of Section 5(2) not by confining our attention to its placing in the statute book, but we should keep in mind all relevant circumstances to decide the same. He submits that though setting has its importance, context is also no less important, and to find out the context, the section may not be viewed in isolation but mind may be applied to the mischief which is sought to be remedied by the amending provision. That such should be the approach was pointed out in *Utkal Contractors & Joinery (P) Ltd. v. State of Orissa*, AIR 1987 SC 1454. In that case, Chinappa Reddy, J., speaking for a two-Judge Bench, stated in paragraph 9 that an interpreter of a statutory provision has to discover the reason for the statute and having thus set the sail to the wind should proceed further, in which journey no word of a statute may be construed in isolation, and it would be remembered that the Parliament does not waste its breath unnecessarily, nor can it be assumed to make pointless legislation. It was also emphasised that though the words of an enactment are important, the context is no less important. In paragraph 13, Lord Reed's admonition in *Maunsell v. Olins*, (1975) All ER 16, was noted wherein it was stated that the rules of construction are our servants and not our masters, and they are aids to construction and all relevant circumstances must be looked into to decide what weight to attach to any particular provision.

13. Section 5 (2) read as above would clearly indicate that it was meant to be a charging section, as is Section 4. The mischief which was sought to be remedied by enacting Section 5 (2) was that there was found to be a large scale evasion in payment of tax as per Section 4, because of which Section 5 (2) was enacted,

which departed from the principle of assessment mentioned in Section 4, which is 'payments for admission', as defined in Section 3(7) of the Act, whereas Section 5(2) tax is levied on 'gross collection capacity', which has nothing to do with the actual payment for admission.

14. We would, therefore, hold that Section 5(2) does not clash with Section 4, and both can co-exist, and in case where Section 5(2) would be attracted -- which would be so in case of local areas mentioned in the aforesaid notification -- Section 4 would not operate. As to Section 5(2) being in clash with Section 4-A, it is enough to say that the latter section has imposed a very nominal tax on every show, which varies from a sum of rupees five to rupees twentyfive. There is no dispute at the bar that there can be two different types of taxes on shows. We would, therefore, reject the second contention also.

15. Ground No. 3 : Taking away of composition right.

As to this, Shri Patnaik contends that in some parallel statutes, which have been enacted in some other States, to wit., Andhra Pradesh and Bihar, composition has been allowed only where tax is calculated on certain percentage of gross collection levy for a fixed number of shows specified by the rules, as would appear from Section 3-B of the Bihar Entertainments Tax Act, 1948, the validity of which came to be examined by the Patna High Court in *Sayed Jamilur Raheman v. State of Bihar*, (1986) 34 BLJR 502, and Section 5 of Andhra Pradesh Entertainments Tax Act, 1939, which came up for consideration in *Alankar Theatre v. Entertainments Tax Officer*, (1991) 82 STC 417, by a Bench of the Andhra Pradesh High Court.

16. It is contended by Shri Patnaik that Section 5(2) of the Act has not visualised tax for a fixed number of shows to be specified, but varies from number of shows actually held, because of which option for composition is indeed not required. This submission of Shri Patnaik is another shot in the arm of the Department, because the impugned notification, unless read as submitted by the learned counsel, would not have conveyed this meaning. This, however, is the stand of the Department and this submission seems also plausible, according to which the mention of 'seventy shows' in the notification is the maximum number for the purpose of

calculating the gross collection capacity. To make it clear, the learned counsel submits that if in a particular case there were to be, say, only ten shows in a month, the gross collection capacity shall be calculated on the basis of ten shows. If, however, the number were to exceed seventy and were to be even one hundred fifty, which is the maximum number, as five shows can at best be held in a day, the calculation shall be on the basis of seventy shows. This submission has been advanced and is being accepted by us, though it is rather strained and tenuous, because the word 'condition' appearing towards the end of the first paragraph of the notification, alone is being pressed into service for this purpose. According to the learned counsel, this word signifies that the condition for the imposition of tax is that the tax shall be payable on seventy shows and not more, but if the number of shows be less, that number alone has to be taken into consideration, because the tax is on every 'show' and for the shows 'held'.

17. Ground No. 4 : The fixation of the number of shows at 70 by the notification is arbitrary.

The aforesaid submission of Shri Patnaik takes away the wind out of sail in so far as this ground is concerned, because, if the tax is to be levied on the basis of actual number of shows held by the concerned theatre-owner, the notification ceases to be arbitrary; indeed, it comes as beneficial to those whose number of shows actually held exceeds 70.

18. Ground No. 5 : Tax is confiscatory in nature.

This submission has been advanced because of the special meaning given to the expression 'gross collection capacity' in the Explanation to the section by which even entertainment tax and surcharge and additional surcharge, if any, on that tax is included in calculating the amount of tax payable as levied by Section 5(2). In this connection, Shri Das in his written submission filed on 13-1-1993 has referred, inter alia, to *Lokmanya Mills v. Barsi Borough Municipality*, AIR 1961 SC 1358, in which the method adopted by the Municipality for assessment of house tax not permitted by law was held to be illegal. The reference to paragraph 5 of that judgment in which this aspect has been dealt with shows that the municipal rule requiring computation of annual rental value of floor area was held to be ultra vires

because 'annual letting value' on which levy of tax was permitted by the Act postulated rent which a hypothetical tenant may reasonably be expected to pay for the building if let. The other basis for imposition of tax permitted by the Act was capital value. The Municipality, however, ignored both the methods and adopted a method not sanctioned by the Act because by prescribing valuation on the basis of floor area of the premises, the Municipality not only fixed arbitrarily the annual letting value which bore no relation to the rental which a tenant may reasonably pay, but rendered the statutory right of the tax-payer to challenge the valuation as illusory. This cannot be said about the case at hand inasmuch as the basis of tax has nexus with the earning on entertainment tax.

19. The next decision to be referred in this connection is *New Manek Chowk Spinning & Weaving Mills v. Municipal Corporation of City of Ahmedabad*, AIR 1967 SC 1801, in which tax was levied on machinery, whereas the entry permitted tax on land and building. It was, therefore, held that the same could not be levied on machinery contained in or situate on the building even though the machinery was there for the use of the building for a particular purpose. The present apparently is not a case of the aforesaid nature.

20. The real submission in this regard is that the tax is confiscatory because even if there is one show and every few persons are admitted to entertainment, tax would be calculated as per gross collection capacity and would even include not only the payment made for admission but entertainment tax and the surcharge and additional surcharge, if any, on the tax leviable under the Act. This, according to Shri Das, is nothing but confiscation. Shri Patnaik has, however, mentioned in his written submission filed on 13-1-1993 that in so far as the theatres falling under Section 5(2) are concerned, no surcharge is leviable under Section 7A and no additional surcharge is payable under Section 7B, as these imposts are payable only where tax is payable on payment for admission. This part, according to Shri Patnaik, admission fee charged by the proprietors from the visitors is a lump sum amount inclusive, inter alia, of the entertainment tax, and so, exclusion of this tax from the definition of 'gross collection capacity' would have encouraged cinema halls to bifurcate the payment for admission and charge, inter alia, for entertainment tax and yet not pay tax on the same on the plea that payment of

such entertainment tax is not admission, although, as a matter of fact, they are payments for admissions. It is because of this that, according to the learned counsel, the definition of 'gross collection capacity' is not unreasonable.

21. Whether the definition of gross collection capacity as given in the explanation is reasonable or not is a matter on which it is not necessary, according to us, to express any opinion because even if a tax be unreasonable, the same is not liable to be struck down unless it is unreasonably high so much so that it can be said to be confiscatory in nature, as would appear from what is being stated later.

22. On the question as to when a tax can be said to be confiscatory, the leading decision is that of *K.T. Moopil Nair v. State of Kerala*, AIR 1961 SC 552. In that case the impost was regarded as confiscatory because tax liability of Rs. 54,000/- was fastened on the forest owner though he was making an income of Rs. 3,100/- per year. It was, therefore, stated that unless the petitioner was very enamoured of the property and of the right to hold it, he will not be in a position to pay the deficit of Rs. 51,000/- every year in respect of the forests and the legal consequences of his making a default will be that the money will be realised by the coercive processes of law and one could easily imagine that the property may be sold at auction and may not fetch even the amount for the realisation of which it may be proposed to be sold. It is because of this that the levy was regarded as clearly confiscatory in character and effect, for which purpose it was not even necessary to tear the veil, stated the Court. (See paragraph 10).

23. The Constitution Bench decision in *Raja Jagannath Baksh Singh v. State of Uttar Pradesh*, AIR 1962 SC 1563 : (1962 All LJ 799) is very important to decide this aspect of the case because in that case also a submission was advanced that the statute in question was a colourable legislation because of the unreasonably high rate of tax, relying on which it was submitted that the legislature had adopted a device and a cloak to really confiscate the property in the name of taxing the citizen. This submission has been dealt in paragraph 21 of the judgment in which in support of the plea that legislation was colourable, the argument advanced was that the rates prescribed by the statute were so heavy that the asses-sees would virtually have to part with their properties within a short time in order to beat the

burden of the tax. It was, therefore, stated that this plea raised the question as to whether a taxing statute can be challenged on the ground that the burden of tax imposed by it is unreasonably high or excessive. It was then observed that the validity of a taxing statute cannot be challenged on the ground that the tax levied is unreasonably high. It was thereafter stated as below :--

'Though the validity of a taxing statute cannot be challenged merely on the ground that it imposes an unreasonably high burden, it does not follow that a taxing statute cannot be challenged on the ground that it is a colourable piece of legislation and as such, is a fraud on the legislative power conferred on the Legislature in question. If, in fact, it is shown that the Act which purports to be a taxing Act is a colourable exercise of the legislative power of the Legislature, then that would be an independent ground on which the Act can be struck down. Colourable exercise of legislative power is not a legitimate exercise of the said power and as such, it maybe open to challenge. But such a challenge can succeed not merely by showing that the tax levied is unreasonably high or excessive, but by proving other relevant circumstances which justify the conclusion that the statute is colourable and as such, amounts to a fraud.'

24. Reference was made thereafter in paragraph 22 to Moopil Nair's case and it was observed as below :--

'In other words, the conclusion that a taxing statute is colourable would not and cannot normally be raised merely on the finding that the tax imposed by it is unreasonably high or heavy, because the reasonableness of the extent of the levy is always a matter within the competence of the Legislature. Such a conclusion can be reached where in passing the Act the Legislature has merely adopted a device and a cloak to confiscate the property of the citizen taxed.'

25. We have thus to see whether in the present case we can go to the extent of saying that the tax is confiscatory keeping in mind what was stated in this regard in Moopil Nair's case. According to Shri Das, as the conception of gross collection capacity includes even the entertainment tax payable on it (surcharge and additional surcharge being not leviable, according to Shri Patnaik, in cases covered by Section 5(2) of the Act), and as tax is levied irrespective of the number

of visitors in cinema halls, the proprietors would have no choice but to sell the theatres to pay the tax. We do not think we can concede this argument inasmuch as the rate of tax fixed is 20% of the collection capacity. It would be reasonable to assume that if a show is held, without which no tax would be leviable under Section 5(2), the number of visitors should be, or might be, around 20% of the capacity. It may be that, but in some cases it may not be. That cannot be a reason to regard the levy as unreasonable and, even if unreasonable, to regard it so unreasonable as to hold that the same would result in virtually confiscating the property.

26. We are therefore, not in a position to hold that the levy is confiscatory or, to put it differently, the present is a case of colourable exercise of legislative power.

27. Ground No. 6 : Fixation of the rate at 20% is violative of Article 14.

The final submission is that a fixed percentage of 20 (as specified in the notification) for all the cinema houses situated at the local areas in question, the same being the Municipal Councils/Notified Area Councils of Cuttack, Bhubaneswar, Puri, Berhampur, Sambalpur and Rourkela is in violation of Article 14 inasmuch as the location of the different cinema houses at different places yield varying amounts of income, which vary even from town to town, and so, fixation of 20% for all has treated unequals as equals and has thereby violated Article 14 of the Constitution. In this connection it is urged by Shri Das that a perusal of the Bihar and Andhra Pradesh Entertainments Tax Act would show that a great amount of spade-work had been done before finalising the percentage, which also varied from place to place, but in the present case, there are no materials on record to show as to what was the evasion, if at all, and why all the cinema houses have been clubbed together and a uniform percentage has been fixed for all.

28. The reply of Shri Patnaik is that location alone does not determine the earning capacity. Indeed, according to the learned counsel, there is not a single yardstick, on which cinema houses can be classified. Strong reliance is placed in this regard on Alankar Theatre (supra) in which the challenge based on Article 14 has been dealt from pages 445 onwards. It is stated at page 446 that the rate of occupancy in a theatre depends upon several variable factors, to wit, the quality of the

pictures, the facilities/comforts provided, the age of the theatre and even the traffic restrictions, if any, in front of the theatre. In that case it was conceded that even a far-flung air-conditioned theatre may have a better rate of occupancy than a non-air conditioned theatre in the heart of the city. It was also asked by the Bench : What do you mean by the heart of the city? There may be several equally important and busy centres in a city or town'. Factor like the type of connection with the distributors and producers of the film has also its own role to play. It was then pointed out at page 447 that it is difficult to pin-point any single factor as being responsible for success or failure or for high rate or low rate of occupancy. There are any number of factors which go to determine this, and in deed, it may not be possible or practicable for the legislature to conceive of or devise such classification as to meet every conceivable situation or to ensure that not a single proprietor of a cinema theatre is prejudice. We are in respectful agreement with these observations of the Andhra Pradesh Bench.

29. Shri Patnaik further submits in this connection that the percentage of tax in the present case is 20 which was the minimum rate fixed by the Andhra Pradesh Act whose validity was upheld in Alankar Theatre's case, as would appear from the varying percentages mentioned by Section 4(1) of that Act as noted at page 433 of the judgment. The chart at that page shows that the minimum was 19 per cent, which was for Gram Panchayats, and for other places it was higher than between 20 to 29. The rate fixed for Gram Panchayats has apparently no relevance for the present case, as we are dealing with most important towns of the State.

30. Shri Patnaik also contends that in a taxing statute, a greater play in the joints has to be allowed, as was observed by Holmes, J., whose observations were quoted with approval in R.K. Garg v. Union of India, AIR 1981 SC 2138. Because of this, the Court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than any other areas where fundamental rights are involved. To put in the words of Frankfurter, J. in *Morey v. Doud*, (1957) 354 US 457 :-

'In the utilities, tax and economic regulation cases, there are good reasons for judicial, self-restraint if not judicial deference to legislative judgment. The

Legislature after all has the affirmative responsibility. The Courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the Judges have been overruled by events self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.'

31. In view of all the above, we would not agree with the learned counsel for the petitioners that the fixation of a uniform rate (20 per cent.) is in violation of Article 14 for having treated unequals as equals.

32. Conclusions

The challenge to the validity of the section and the notification on any of the grounds mentioned above cannot, therefore, be upheld. The petitions are, therefore, dismissed.

33. Before parting, we would state that in O.J.C. No. 3494/90, there having been no stay order, tax is said to have been collected by calculating it on the basis of gross collection capacity taking the figure of seventy shows per calendar month, whereas the actual shows held per month were less, which actually determine the tax liability. If this factual averment be correct, we direct refund of the collection made from the petitioner of this case, which would be found to be in excess. Necessary refund shall be made within a period of two months from the date of receipt of this Court's order.