

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1658 OF 2013

|                               |   |             |
|-------------------------------|---|-------------|
| The Bombay Presidency Radio   | } |             |
| Club Ltd. and Anr.            | } | Petitioners |
| versus                        |   |             |
| State of Maharashtra and Ors. | } | Respondents |

Mr. R. B. Raghuvanshi with Mr. Manoj  
Mirchandani, Mr. S. A. Bhagwat and Mr.  
Ratnesh Dube for the Petitioner.

Mr. G. W. Mattos – AGP for State.

CORAM :- S. C. DHARMADHIKARI &  
REVATI MOHITE DERE, JJ.

DATED :- DECEMBER 18, 2015

P.C. :-

This Writ Petition under Article 226 of the  
Constitution of India challenges a recovery of entertainment duty  
under the Bombay Entertainments Duty Act, 1923.

2) The Petitioners claim that it is a club. Though it is  
registered as a company, it is a non profit company and section  
25 of the Indian Companies Act, 1956 is relied upon. It is stated  
that only for the convenience of the members, there are several  
facilities and amenities provided, including restaurant. However,  
no activities in the nature specified in the Bombay

Entertainments Duty Act, 1923 are held or have taken place. The Petitioners state that there may be a permit room, but there is no live orchestra of any nature on day to day basis. Despite that a demand notice dated 31<sup>st</sup> August, 2010 was issued demanding a sum of Rs.2 lacs for the month from August, 2010. The payment was made without prejudice. However, again the Petitioners were served with letters, which are referred to at Annexures 'B', 'C' and 'D' to the Petition. The Petitioners have made payments without prejudice to their rights and contentions, particularly on the applicability of the Act itself.

3) During the pendency of this Petition, the grievance is that in the teeth of an ad-interim order, the Collector has now raised a further demand on 23<sup>rd</sup> November, 2015 calling upon the Petitioners to pay a sum of Rs.42 lacs, else he would initiate coercive measures for recovery.

4) It is in these circumstances that Mr. Raghuvanshi, learned Counsel appearing for the Petitioners would submit that unless and until there is an adjudication, it will not be permissible for the authorities to impose any demand. He would submit that a taxing statute prescribes the levy and imposition, the assessment and valuation, followed by remedies to challenge the same. When the orders of adjudication gain finality, the recovery would follow.

Thus, recovery must precede all these, else it is unlawful and illegal.

5)            Though this Petition is pending in this Court and some intermittent payments have been made as per the chart handed over by Mr. Raghuvanshi, what we find is that on prior occasions as well, the Petitioners were relegated to remedy under the Act. The authorities under the Act would be able to examine the plea of their jurisdiction and applicability of the Act to the activities undertaken by the Petitioner club. In the aforesaid circumstances, we do not express any opinion on the rival contentions. We direct the second Respondent to this Petition to allow the Petitioners to inspect the relevant record and thereafter make submissions before him on the legality of the levy and the jurisdiction of the authority to collect the entertainment duty. The Collector shall pass a speaking order on such appearance of the Petitioners before him and at the conclusion of the hearing. He shall pass the same within a period of eight weeks from the date of conclusion of the hearing.

6)            We have heard both sides on the point of interim protection. Mr. Raghuvanshi, relying upon the chart, would submit that till the end of 2013, a sum of Rs.20 lacs has been paid. Mr. Mattos, learned AGP appearing for the State, on the

other hand, states that on some occasions there was an ad-interim protection in the Petition, but that was limited. The Petition was also dismissed for want of prosecution and later on restored. He would submit that now for the period 2014, nothing has been paid though the same activities continue in the club. On this limited point, we find that the equities and rights can be balanced with a direction to the Petitioners to deposit a sum of Rs.20 lacs without prejudice to their rights and contentions. The same shall be deposited within a period of eight weeks from today. To enable the Petitioners to deposit the same, we direct that coercive measures shall not be initiated for a period of eight weeks from today. If the amount is deposited and proof of the same is produced, the Collector shall proceed in accordance with our direction, grant a personal hearing and pass the speaking order. Needless to clarify that in default, the Collector can proceed to recover the amount in terms of the recovery process and in accordance with law. All contentions of both sides are kept open.

7) With the aforesaid directions, the Writ Petition is disposed of.

(REVATI MOHITE DERE, J.)

(S.C.DHARMADHIKARI, J.)