IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 16.07.2019
Coram
THE HONOURABLE MR. JUSTICE M.SUNDAR
W.P.Nos.20786, 20789, 20792, 20794,
20795, 20798 & 20799 of 2019
and WMP Nos.19970, 19973, 19978, 19982,
19984, 19985 & 19987 of 2019

W.P.No.20786 of 2019

ARR Srinivasan Firm
(ARRS Multiplex) (Screen 1)
95/2, Meyyanoor Road
New Bus stand Back side
Salem 636 004.
Rep. by its Manager
S.J.Jahieer.
W.P.Nos.20786, 20789,

20792, 20794,20795/19

M/S.Rajeswari A/c DTS,
88,Kalarampatty Main Road,
Salem,636 015,
Rep.By its Manager S.J.JAHIEER .. Petitioner
in W.P.Nos.20798/19

Geethalaya Theatre,
No.789,A.Road,
Dadhubai Kuttai,Salem.
Rep.By its Manager S.J.JAHIEER
.. Petitioner in

W.P.Nos.20799/19

vs.

1.Commissioner
Salem Corporation
Salem.

2.Entertainment Tax Officer
Salem Corporation
Salem.
.. Respondents in all WPs

Common Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent relating to the notice dated 14.06.2019 in

A1/11158/2017 of the 2nd respondent and quash the same and consequently direct the 2nd respondent to collect security deposit from the petitioner at the rate of 8% as Entertainment Tax and pass such further or other orders that this Hon'ble Court may deem fit in the facts and circumstances of the case and thus render justice.

For Petitioner (In all W.Ps.) : Mr.B.Kumar, Senior Counsel for Mr.S.Ramachandran

For Respondents (In all W.Ps) : Mr.S.Sathish, Standing Counsel for Salem Municipal Corporation.

COMMON ORDER

This common order will govern these seven writ petitions. In other words, this is a common order which will dispose of these seven writ petitions.

2. Mr.B.Kumar, learned Senior Counsel instructed by Mr.S.Ramachandran, learned counsel on record for writ petitioner in all the seven writ petitions is before this Court. Mr.S.Sathish, Standing Counsel for Salem City Municipal Corporation accepts notice on behalf both the respondents in all seven writ petitions and is before this Court.

3. With consent of learned counsel on both sides, main writ petitions are taken up, heard out and are being disposed of.

4. To be noted, learned Standing Counsel for Salem City Municipal Corporation is instructed by a staff from the office of the said Corporation, who is present in Court. This Court is informed that the central theme/core issue in these seven writ petitions is the same. This has impelled this Court to dispose of these seven writ petitions by this common order.

5. Suffice to say that all seven writ petitioners are in the business of Cinematograph exhibition which can be referred to in common parlance as 'cinema theatres'. To be noted, five writ petitions pertain to five different screens in one Multiplex. It may not be necessary to make further elaboration in this regard and it would suffice to say that there is no disputation or disagreement before this Court that all the seven writ petitioners are covered by an Act, which goes by the name 'Tamil Nadu Local

Authorities Entertainments Tax Act, 2017 (Act 20 of 2017)', which shall hereinafter be referred to as 'said Act' for brevity. There is also no disputation or disagreement that said Act came into force on and with effect from 28.06.2017.

6. Before this Court adverts to the central theme/core issue, it is necessary to mention that two provisions in the said Act need to be noticed and they are Sections 33 and 34. Section 33 of said Act gives rule making power to the Government for making rules for carrying out all or any of the purposes of said Act. Section 34 of said Act vests the local authority to make by-laws for the purpose of giving effect to the provisions of said Act. In other words, while Section 33 is the rule making power wherein Government (State Government) has been vested with the power to make rules in the nature of subordinate legislation, Section 34 is a provision which vests the local authority with powers to make by-laws. Therefore, by-laws made under Section 34 of said Act also assume the character of subordinate legislation

7. Pursuant to the by-laws making power vested with the local authority, the local authority concerned has made by-laws which go by the caption 'The Tamil Nadu Local Authorities Entertainments Tax By-Laws, 2017' (hereinafter 'said by-laws')

8. This takes us back to the central theme/core issue which pertains to making of security deposit by the writ petitioners, in view of tax which they are liable to pay under said Act.

9. With regard to tax payable by writ petitioners under said Act, it is submitted before this Court without any disputation or disagreement, that all seven writ petitioners qualify as permanent theatres (as opposed to temporary (touring) theatres and semi-permanent theatres), that all the seven writ petitioners are liable to pay tax under said Act which was at the rate of 30% of what can be described in common parlance as tickets sold in a week and that this 30% was scaled down and brought on and with effect from 16.10.2017.

10. To be noted, this 30% is set out in Section 3(2)(a)(i)(A) of said Act. That it was brought down on and with effect from 16.10.2017 is not in dispute. To be noted, it has been brought down to 8% for new Tamil films, 15% for new films made in other Indian languages and 20% for new Films made in English and other foreign languages. With regard to old films, it is 7% for Tamil films, 10% for

films in other Indian languages and 14% for films in English and other foreign languages.

11. That the writ petitioners are paying tax under said Act is not in dispute.

12. The core issue in these seven writ petitions as mentioned supra, pertain to security deposit, which the writ petitioners have to pay.

13. Methodology for computing the quantum of security deposit to be made and the mode in which such deposits have to be made is adumbrated in by-laws 6 of said by-laws and considering the significance of the said provision in the instant writ petitions, this Court deems it appropriate to extract entire by- law 6. By-law 6 of said by-laws, reads as follows:

> '6(1) The Entertainments Tax Officer shall, if he proposes to sanction the application, fix the amount and the nature of security to be furnished by the proprietor for the proper payment of entertainments tax and the time within which such security should be furnished.
>
> (2) The amount of security deposit so fixed shall, in the case of a temporary (touring) theatre or an open air theatre, be equal to the entertainments tax payable based on the full capacity of the auditorium for a period of seven days. In the case of a permanent or a semi-permanent theatre, the amount of security deposit so fixed shall be equal to seventy-five per cent of the tax payable as aforesaid. For the purpose of calculation of the tax payable for a period of seven days under this rule, the number of shows shall be reckoned as fourteen in the case of temporary (touring) theatres, twelve in the case of open-air theatres and twenty-two in the case of permanent and semi-permanent theatres:
>
> Provided that the Entertainments Tax Officer may in his discretion, fix the amount of security deposit in the case of a temporary (touring) theatre or an open-air at twice the amount aforesaid and in the case of a permanent or a semi-permanent theatre at one and a half times the amount aforesaid.

The security shall be in any one of the following forms:-

(i) Deposit to Municipal Fund of cash;

(ii) Government Promissory Notes duly pledged in the name of the Entertainments Tax Officer;

(iii) Post Office Savings Bank Deposits;

(iv) Deposits made with any Nationalized or Scheduled Bank operating in the Municipal Limits or the Tamil Nadu State Co-operative Bank and Central Co-operative Banks approved by the Registrar of Co-operative Societies for this purpose;

(v)Loan bonds or debentures issued by quasi-Government organizations or other institutions, repayment of which is guaranteed by the Government, other than prize bonds and National Defence Certificates, duly pledged in the name of the Entertainments Tax Officer.

Where security is furnished in the form of a deposit with any of the Banks specified in item (iv), the deposit shall be made in the name of the "The Entertainments Tax Officer Account ..... (Proprietor of the theatre)' and the proprietor shall at the time of making the deposit give an application/letter to the Bank to the effect that the deposit in question had been offered to the Entertainment Tax Officer as a security for the due performance of his obligations under the Tamil Nadu Local Authorities Entertainments Tax Act, 2017 (Tamil Nadu Act 20 of 2017) and that the deposit might be held, renewed or released according to the instructions of the Entertainments Tax Officer.

However, in case where Post Office Savings Bank Deposits are offered as security, the Post Office Savings Bank Pass Book should be pledged by the proprietors of the entertainments in the name of the Entertainments Tax Officer. When the security is furnished he shall grant the proprietor a Permit or Certificate of Registration in Form XIX.

(vi) If at any time the deposit already furnished by a proprietor under clause (i) is found to be inadequate it shall be open to the Entertainments Tax Officer, by notice, to require the proprietor to make an additional deposit within the time specified in the notice.

Explanation._ For the purpose of fixing the amount of security, a place licensed for the Exhibition of Cinematograph Film on Television Screen through Video Casette Recorder shall be deemed to be a permanent or semi-permanent theatre.'

14. Second respondent before this Court has raised seven different demands, all dated 14.06.2019, captioned ',Wjp mwptpg;g[' and these seven demand notices have been assailed in each of these writ petitions.

15. A perusal of the demand notices, reveal that prior to the demand notices, there have been communications from the second respondent to the writ petitioners and those communications are dated 04.01.2018, 02.02.2018, 05.03.2018, 14.12.2018 and 05.04.2018. To be noted, these communications are cited as No.3 in Reference in the aforesaid demand notices dated 14.06.2019, which shall hereinafter be collectively referred to as 'impugned demand notices' in plural and 'impugned demand notice' in singular.

16. A perusal of aforesaid No.3 in Reference in the impugned demand notice reveals that there are as many as five communications prior to the impugned demands.

17. In the interregnum, there has also been a Circular from District Collector Salem, and that Circular is dated 07.02.2019, bearing Reference No.O.Mu.2037/2019/C2. To be noted, this has been cited as No.4 in Reference in the impugned demand notices.

18. What is of relevance is, none of these communications from the second respondent or the Circular from the District Collector have been challenged by writ petitioners. On the contrary, what emerges clearly from the affidavits filed in support of the instant seven writ petitions as well as the submission made in the hearing today is that writ petitioners have subjected themselves to the demand of security deposit, more particularly demand of security deposit as computed under by-law 6 of said by-laws and they have also paid a part of it. Now that the impugned demand notices captioned ',Wjp mwptpg;g[' have been issued, calling upon writ petitioners to pay security deposit, instant writ petitions have been filed. To be noted, in the impugned demand notices, it has been mentioned that stringent action will be initiated against

cinema theatres which do not make the security deposit and that such stringent action will be initiated by Salem City Municipal Corporation.

19. In this regard, learned Standing Counsel for Salem City Municipal corporation, on instructions, submitted that prior to the impugned demand notices, writ petitioners were put on notice inter alia vide the aforesaid communications/circulars, meetings were convened giving sufficient advance notices inter alia to writ petitioners, noticees attended such meetings, writ petitioners were given an opportunity to put forth their views/objections, all of which were considered and thereafter the quantum of security deposit was arrived at. In this regard, to buttress and bolster this submission made on instructions, learned counsel has produced the relevant files of Salem City Municipal Corporation, more particularly, proceedings dated 19.06.2019. A perusal of this communication shows that the total of security deposits demanded from the petitioner in each of these seven writ petitions adds up to 31.40 lakhs, breakup of which is as follows:

ARRS GROUP OF THEATRES

S.No	Name of the Theatre	Deposit Amount(Rs. in lakhs)
1	ARRS Multiplex Screen No.1	3.95
2	ARRS Multiplex Screen No.2	3.45
3	ARRS Multiplex Screen No.3	3.45
4	ARRS Multiplex Screen No.4	6.88
5	ARRS Multiples Screen No.5	7.18
6	Sri Rajeswari	2.59
7	Geethalaya	3.90
	Total	31.40

20. Out of this Rs.31.40 lakhs, seven writ petitioners have thus far already paid Rs.11.40 lakhs.

21. In the aforesaid backdrop, notwithstanding various averments and grounds raised in the affidavits filed in support of the instant writ petitions, learned Senior Counsel for writ petitioners restricted and focused his submission to one pivotal submission and that one pivotal submission is to the effect that the security deposits

which have been demanded vide impugned demand notices have been computed on the basis of a percentage of tax payable by taking the tax payable as 30%.

22. As would be evident from the scaling down of tax payable from 30% to various rates which has been set out supra and alluded to elsewhere supra in this order, it is not a uniform scaling down to 8% as contended, but the scaling down is based on the type of film which is on show. Effectively there are six rates varying between 7% and 20%, the details of which have been alluded to supra. However for the sake of clarity and ease of reference, this Court extracts the relevant portion as placed before this Court and the same reads as follows:

> 'Where as, the Government in Government Order dt.16.10.2017 has further revised the levy of Entertainments tax on exhibition of cinematograph in theatres whether permanent or semi-permanent by way of remission w.e.f. 16.10.2017 at the following rates;
>
> (i) at the rate 8% for new Tamil films, 15% for new films made in other Indian languages, and 20% for new films made in English & other foreign languages,
>
> (ii) at the rate of 7% for old Tamil film, 10% for old films made in other Indian languages, and 14% for old films made in English & other foreign language.'

23. Therefore, the maximum tax payable is 20%. In this regard, it is very fairly submitted by learned Senior counsel for seven writ petitioners, on instructions, that these seven writ petitioners do not restrict themselves to screening films in any particular language and they are not restricted to screening only old or new Tamil films. Therefore, these seven writ petitioners screen films which fall in all three categories qua languages and three categories qua old and new. In other words, movies in all six categories are being screened and therefore, the tax payable can be anything between a minimum of 7% and a maximum of 20% depending on the movie screened.

24. Therefore, in the light of the undisputed position as far as the seven writ petitioners are concerned, this Court has no difficulty in accepting the submission of learned Standing Counsel for Salem City Municipal Corporation that the fiscal authority has taken 15% as the tax payable for the purpose of computing security deposit under by-law 6, which has been extracted and reproduced

supra.

25. A further careful and close reading of by-law 6 reveals that the method of computation contemplated in 6.2 of the by-laws is that the security deposit is based on 'full capacity of the auditorium for a period of seven days'.

26. Therefore, the computation is to be by taking the full capacity of the theatre and multiplied by seven days. As these seven theatres screen movies/films in all six categories depending on the movie, they are liable to pay 15% also as, already mentioned supra, they being permanent theatres. Therefore, the second respondent has taken 15% as the tax payable based on the full capacity of the auditorium for a period of seven days. This takes us to what percentage of this numerical value can be demanded as security deposit. A further careful and close reading of by-laws 6.2 of said by-laws reveals that it can be anything between 75% of the tax so payable and 1 ½ half times the tax so payable. This is a discretion vested in the Entertainment Tax Officer, who without any disputation, is respondent No.2 before this Court. In the instant case, second respondent has adopted the 1 ½ half times of the tax payable yardstick to demand security deposit.

27. Security deposit is for the purpose of ensuring that if there is any default in payment of tax, the exchequer is not left high and dry. Therefore, this Court finds no illegality in the second respondent adopting 1 ½ half times of tax payable i.e., 15% in this scenario for arriving at the security deposit that has been demanded.

28. Moreover, as mentioned supra, this quantum has been arrived at through a process of consultation and there are several communications which have been referred to supra. There have been no objections from the writ petitioners in this regard earlier. This Court is informed that this is the first time that writ petitioners have assailed the impugned demand notices. In other words, the mode of computation, the methodology for calculation as well as the determinants/parameters for such computation within the four corners of by-law 6 of said by-laws was never assailed or challenged though meetings were convened and writ petitioners were informed. Furthermore, writ petitioner has submitted themselves to such methodology as well as the parameters/determinants and have also paid a part of the demand. To be noted, as mentioned supra, out of a total demand of Rs.31.40 lakhs qua the seven writ petitioners, a sum of Rs.11.40 lakhs has already been paid.

29. That puts an end to the writ petitioners campaign qua quantum of security deposit that has been demanded. This takes us to the mode of deposit.

30. In the instant case, it is submitted that Rs.11.40 lakhs already paid by seven writ petitioners has been paid by way of cheques drawn in favour of second respondent. On instructions, learned Standing Counsel for Salem City Municipal Corporation submits that cheques have since been encashed and the money is lying as 'Deposit to Municipal Fund of cash'. To be noted, 'Deposit to Municipal Fund of cash' is certainly one of the permissible modes of deposit as would be evident from the different modes, in which security deposit can be furnished which have been adumbrated in by-law 6, more particularly proviso to by-law 6. Also to be noted, entire by-law 6 has been extracted and reproduced supra.

31. It is now submitted, on instructions, that with regard to the balance of security deposit, it is open to the writ petitioners to make the deposits in any one of the forms of deposit adumbrated in the proviso to by-law 6.2 of said by-laws.

32. Though a part of the security deposit has been received by way of a cheque drawn in favour of the second respondent, in the light of the submissions made on instructions by Standing Counsel that the cheques have since been encashed and the monies have been deposited to Municipal Fund of cash, which is a permitted mode of deposit, this Court finds no infirmity or illegality in the mode of deposit also. This is more so, as it is submitted by respondents' standing counsel, on instructions, that the balance of security deposit can be made by seven writ petitioners in any one of the modes adumbrated in the proviso to by-law 6.2 of said by-laws.

33. Before parting with this case, for the purpose of capturing the trajectory of the hearing as comprehensively as possible and for the purpose of completion of hearing, it is necessary to record that it was brought to the notice of this Court that post impugned demand notices, writ petitioners have sent a communication dated 02.07.2019 and the second respondent has sent a reply dated 04.07.2019. Communication said to have been sent by writ petitioners dated 02.07.2019 has not been placed before this Court, but a copy of the communication dated 04.07.2019 from the second respondent has been placed before this Court. A perusal of the same reveals that writ petitioners have

referred to some Government Orders, but have not given details of the Government Orders in terms of date, number etc.,

34. However, now that this submissions made today before this Court are without any disputation or disagreement, it may not be necessary to advert to this aspect of the matter any further.

35. Owing to the narrative thus far, this Court finds no grounds to interfere with the impugned demand notices, the writ petitions fail and the same are dismissed. Consequently, connected miscellaneous petitions are dismissed. There shall be no order as to costs.

36. At this juncture, after the order has been passed, learned Senior Counsel for writ petitioners, on instructions, requests that some time may be granted to the writ petitioners to make the aforesaid balance security deposit of Rs.20 lakhs in accordance with this order. Considering that writ petitioners have already made nearly 1/3rd of the security deposit demanded (Rs.11.40 lakhs from and out of a total security deposit of Rs.31.40 lakhs demanded), writ petitioners are given three months time to make the balance deposit i.e., three months from today. Therefore, until then there shall be no coercive action or distraint proceedings against the writ petitioners in any manner and though obvious it is made clear that if the balance deposit of Rs.20 lakhs is not made within three months from today, it will be open to the respondents to proceed in accordance with law.

Sd/-
Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

vsm

To

1.Commissioner,Salem Corporation,Salem.
2.Entertainment Tax Officer,Salem Corporation,Salem.

+2ccs to Mr.S.Sathish , Advocate SR.No. 60328
+2ccs to Mr.S.ramachandran , Advocate SR.No. 60379
+1 cc to Spl Government Pleader Sr.No. 60891

W.P.Nos.20786, 20789, 20792, 20794, 20795, 20798 & 20799 of 2019
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A.SK(26/07/2019)