IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.87 OF 2007

Juhu Vile Parle Gymkhana Club .. Petitioner
v/s.
State of Maharashtra And 2 Ors. .. Respondents

WITH
WRIT PETITION NO.1150 OF 2011

Mandpeshwar Civil Federation And Anr. .. Petitioners
v/s.
The State of Maharashtra And 3 Ors. .. Respondents

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Ms. Prachi Khangde, a/w. Mr. Apurva Kulkarni, i/b. M.P. Vashi and Associates, for the Petitioner in WP/87/2007.

Ms. Archana S. Shelar, i/b. Avinash Fatangare, for the Petitioner in WP/1150/2011.

Mr. S.B. Gore, AGP, for State.

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CORAM: G.S. KULKARNI &
JITENDRA JAIN, JJ.

DATE : 30th JUNE 2023

Oral Judgment (Per G.S. Kulkarni, J.):

Writ Petition No.87 of 2007

This petition under Article 226 of the Constitution of India has raised a challenge to the demand notices issued by the

Respondents under the Bombay Entertainment Duty Act, 1993 read with Bombay Entertainment Duty Rules, 1958.

2. The substantive submissions made by the Petitioner are thus:-

The case of the Petitioner is that the facilities regarding the billiard tables, in respect of which entertainment duty has been demanded by the impugned notices, is primarily a facility provided by the Petitioner only to its members and not for any outsiders, and no profit is being earned by the Petitioner on such facility. It is also the case of the Petitioner that the Petitioner is a Public Trust as also a society registered under the Societies Registration Act, 1860 ("the Act"). It is not a profitable organization. It is on such basis the Petitioner has contended that there was no question of the Petitioner undertaking any activity of "entertainment" falling under the provisions of the said Act and, for that matter, the Rules framed thereunder for levy of the entertainment duty. Learned Counsel for the Petitioner has drawn our attention to two decisions of this Court, which, according to her, would conclude the challenge in favour of the Petitioner. The first judgment of the Division Bench of this Court in the case of *The Gondwana Club, Seminary Hills, Nagpur vs. State of Maharashtra & Ors.*[1] and a recent decision of the Division Bench of this Court on a batch of petitions in the case of *Santacruz Gymkhana*

1 2017 SCC Online Bom 94

vs. State of Maharashtra & Anr.[2].

3. We have perused both the decisions as placed for our consideration. In the case of *Gondwana Club* (supra), a Division Bench of this Court considered a similar challenge of the Petitioner therein who had provided for the facility of billiard tables for its members. The Court observed that as such tables were provided only for the members of the Petitioner club, in furtherance of its objects to provide for social entertainment and physical and mental recreation of its members. The Court, referring to the decision of the Supreme Court in *Geeta Enterprises vs. State of U.P.*[3] held that once the Petitioner was using such billiard tables and/or was providing for games and sports for its own members and was not receiving/inviting any payment from the non-members, or when it was not permitting the public to use the same, the same could not be considered as an "entertainment" liable for which duty was leviable under Section 3 of the Act. More so, when the game did not satisfy the test laid down by the Supreme Court in para 12 of its judgment namely that the game in the club did not contain a public colour that a benefit in terms of money was being derived. On such reasoning, the action of the Entertainment Tax Inspector to initiate proceedings against such Petitioner for payment of duty was held to be bad in law, and accordingly, the demand notices were quashed and set aside by allowing the petition.

2 Writ Petition No.1754 of 2009 & Ors. Dated 14th July 2022.

3 (1983) 4 SCC 202.

4. In the case of *Santacruz Gymkhana (*supra), the Division Bench considering a batch of petitions, following the decision of *Gondwana Club* (supra), observed that in such cases the Petitioners were running its respective clubs on the principles of mutuality as recognised in law, which excluded chargeability or levy of any entertainment tax under the Bombay Entertainment Act, 1993. It was also observed that the Petitioners therein were not established with the object of carrying on business or with the object of making profits, hence the billiard facility as provided by such petitioners did not fall within the purview of the Act, attracting levy of entertainment duty. It is on such reasons, following the decision of the Division Bench in *Gondwana Club,* the petitions were allowed by quashing and setting aside the actions on the part of the Respondents in demanding entertainment duty from the Petitioner therein.

5. We have perused the record of the present proceedings. It appears to us that the Petitioner is similarly placed as in the case of *Gondwana Club, etc.* and to the case of *Santacruz Gymkhana* International Club (supra), as noted by us above. On such conspectus, the demand of the entertainment duty insofar as the facility of billiard tables made available by the Petitioner to its members is concerned, is certainly illegal. The same is required to be quashed and set aside. The petition would, accordingly, stand allowed to this effect.

6. Insofar as the Petitioner's challenge on levy entertainment

duty on the water activities are concerned, learned Counsel for the Petitioner has fairly stated that so far no demand has been raised and, thus, the Petitioner is not pressing its challenge insofar as levy of entertainment duty in respect of the water activities are concerned. We keep open all contentions of the Petitioner in regard to the issues in regard to entertainment duty if so charged in relation to the water activities of the Petitioner.

7. The petition is, accordingly, partly allowed in the above terms. No costs.

<u>Writ Petition No.1150 of 2011</u>

The challenge in this petition is no different from the challenge as raised in Writ Petition No.87 of 2007, on which we have passed the aforesaid order.

2. The substantive prayers in the petition are required to be noted, which read thus:-

> “(a) That, this Hon’ble Court may be pleased to declare that the Petitioners are not liable to pay the entertainment duty for having billiard/snooker tables under the Bombay Entertainment Duty Act, 1923 r/w the Bombay Entertainment Duty Rules, 1958;
>
> (b) this Hon’ble Court be pleased to issue a Writ of Certiorari, or any other writ, order or direction in the nature thereof calling for the records and proceedings pertaining to the impugned Notices/Orders, issued by the Addl. Collector, Mumbai Suburban District on 05.11.2004 (being Exh. `B’ to

the Petition) and by the Tahsildar, Borivli on 07.12.2010 (being Exh. 'D' to the Petition), 03.02.2011 (being Exh. 'F' to the Petition), 04.03.2011 (being Exh. 'H' to the Petition) and 24.03.2011 (being Exh. 'I' to the Petition) from the file of Respondent Nos. 2, 3 and 4 and after going through the legality, validity and propriety of the same, this Hon'ble Court be pleased to quash and set aside the same;

(c) this Hon'ble Court be pleased to issue a Writ of Mandamus, or any other writ, order or direction in the nature thereof restraining the Respondents by an order of injunction of this Hon'ble Court from executing the impugned Notices/Orders, issued by the Addl. Collector, Mumbai Suburban District on 05.11.2004 (being Exh. 'B' to the Petition) and by the Tahsildar, Borivli on 07.12.2010 (being Exh. 'D' to the Petition), 03.02.2011 (being Exh. 'F' to the Petition), 04.03.2011 (being Exh. 'H' to the Petition) and 24.03.2011 (being Exh. 'I' to the Petition) and/or taking any coercive steps to recover the entertainment duty from the Petitioners."

3. For the reasons as rendered by us in our aforesaid judgment in Writ Petition No.87 of 2007, we allow this petition in terms of prayer clauses (a), (b) and (c). No costs.

(JITENDRA JAIN, J.) **(G.S. KULKARNI, J.)**