

1964

*Present : Herat, J., and G. P. A. Silva, J.*

JAFFNA MUNICIPAL COUNCIL, Appellant, *and*  
A. PERUMAIYINAR, Respondent

*S. C. 137/1962—D. C. Jaffna, 873/M*

*Local authority—Imposition of entertainment tax—Requirement of proper resolution—  
Entertainment Tax Ordinance, ss. 2, 3, 8 (1).*

A resolution was passed in 1946 by an Urban Council to levy entertainment tax at 20 per cent. The Urban Council was succeeded later by a Municipal Council (appellant) which, without passing a resolution, sought to levy tax at 25 per cent.

*Held*, that a local authority is precluded by sections 2, 3, and 8 (1) of the Entertainment Tax Ordinance from levying entertainment tax in the absence of a proper resolution.

**A**PPEAL from a judgment of the District Court, Jaffna.

*C. Ranganathan*, for Plaintiff-Appellant.

No appearance for Defendant-Respondent.

*Cur. adv. vult.*

March 17, 1964. G. P. A. SILVA, J.—

The plaintiff-appellant in this case, the Municipal Council of Jaffna, sued the defendant-respondent as organiser and/or proprietor of an entertainment called T. K. S. Bros. Dramas for the recovery of an amount of Rs. 13,541.63 being 25 per cent. of the total sum received as payments for admission to the said entertainment in terms of section 2 of the Entertainment Tax Ordinance, No. 12 of 1946, as amended by Ordinance No. 43 of 1947 and Act No. 2 of 1952. The appellant also claimed 75 cts. as advertisement charges.

The respondent took up the position in his answer that he was not liable to pay any sum to the appellant as no resolution to levy entertainment tax had been passed by the Council and he had devoted the net proceeds to charity and also that the claim was prescribed in law.

The following issues were raised at the trial.

(1) Was the defendant the organiser and proprietor of the entertainment named T. K. S. Brothers Dramas within the Plaintiff Council's area from 11.2.55 to 24.2.55 and 25.2.55 to 27.3.55 ?

(2) Did the defendant as such organiser and proprietor receive a sum of Rs. 54,166.50 as payment for admission to the said entertainment ?

(3) Is the defendant liable to pay to the plaintiff Council a sum of Rs. 13,541.62 as entertainment tax ?

(4) Is the defendant liable to pay 75 cts. as advertisement charges ?

(5) If the above issues are answered in the affirmative, is the plaintiff entitled to recover from the defendant a sum of Rs. 13,542.37 ?

(6) (a) Did the plaintiff Council pass a resolution as required by section 2 of the Ordinance 12 of 1946, to impose and levy entertainment tax ?

(b) Was such resolution if passed approved by the Executive Committee and published in the Gazette ?

(7) If issue 6 is answered in the negative, is the plaintiff entitled to levy entertainment tax ?

(8) Did the expenses of the said entertainment claimed by the defendant exceed 40 per cent. of the gross proceeds of the said entertainment ?

(9) If not, is the defendant entitled to claim exemption from payment of any tax under section 8 of the Ordinance ?

No issue appears to have been framed on the question of prescription set out in the answer presumably because it was not pursued by the respondent.

The District Judge entered judgment for the plaintiff-appellant for 75 cts. only but dismissed his action in respect of the entertainment tax claimed with costs.

Section 2 of the Entertainment Tax Ordinance provides as follows:—

(1) Every local authority shall have power, by resolution, to impose and levy a tax (hereinafter referred to as the "entertainment tax") on payments for admission to entertainments held in the area within the administrative limits of such authority at such rate or rates as may be specified in such resolution.

The entertainment tax may be imposed at different rates for different amounts of payments for admission, but so however that the rate applicable in the case of any such amount shall not be less than five per centum or more than twenty-five per centum of the amount.

(2) Every resolution under sub-section (1) shall be submitted to the Minister for approval and, if so approved, shall be published in the Gazette and shall come into operation on the date of such publication or on such later date as may be specified in such resolution.

Section 3 of the Ordinance provides that where a resolution imposing an entertainment tax is in operation in any area, every payment for admission to any entertainment to which this Ordinance applies and which is held in that area shall, save as otherwise provided in section 8 or section 9, be subject to the entertainment tax so imposed.

Section 8 (1) reads: All payments for admission to an entertainment shall be exempt from and shall not be subject to the entertainment tax if—

(a) the whole of the gross proceeds of such entertainment or the whole of the net proceeds thereof, are devoted to any such public, religious, educational, philanthropic or charitable purpose as may be prescribed by regulation; and

(b) the proprietor of such entertainment has, not less than three days before the date on which the entertainment is held, furnished to the proper officer of the local authority by whom the tax is imposed a statement in the prescribed form to the effect that the gross or the net proceeds of the entertainment are to be devoted to any such purpose or purposes.

Every such statement shall be verified by a declaration to the effect that the particulars contained in the statement are true and accurate.

In this sub-section, "net proceeds" means the sum remaining after deducting, from the whole of the gross proceeds, the amount of the actual expenses of the entertainment or an amount equal to forty per centum of the gross proceeds, whichever such amount is the less.

From a reading of these sections it would appear that a local authority is empowered by resolution to impose and levy a certain percentage of entertainment tax (not less than 5 per centum or more than 25 per centum) on payments received for admissions to entertainments held in the area within the administrative limits of such authority provided such resolution is approved by the Minister and published in the Gazette as required by section 2 (2) subject to the exemption set out in section 8.

The basis of the plaintiff's claim is that the plaintiff had a right in law to levy Entertainment Tax. In order to justify such a right which imposes a financial burden on the defendant it is necessary for the plaintiff to show that the legal requirements which are necessary to found that right should have been strictly complied with. According to section 2 of the Entertainment Tax Ordinance the following requirements should be complied with in order that a local authority may be entitled to levy the tax :—

- (1) there must be a duly passed resolution of the local authority.
- (2) the said resolution must be approved by the Minister.
- (3) the said approval should be published in the Government Gazette.

It is clear that if the first of these requirements is not complied with the right to levy tax would not arise. It is equally clear that if there has been an irregularity in regard to the first requirement the approval by the Minister of an alleged resolution and/or the publication of such approval in the Government Gazette will not invest the local authority with the right to levy entertainment tax.

The respondent's contention at the trial which was upheld by the learned District Judge was that no proper resolution was passed by the appellant and it is therefore necessary to examine the minutes of the meeting at which the resolution was said to have been passed. The minutes of 26th December 1952 of the Jaffna Municipal Council enumerate 18 main items and many more sub-items, some of which took the form of decisions and others of adoptions. The decision in regard to the Entertainment Tax which was item No. 10 was to the following effect :—

"Considered papers regarding the increase in the rate of Entertainment Tax.

It was decided to increase the rate of 25 per cent. (uniform) Messrs. K. Kuhathasan, A. Thurairajasingham and C. Nalliah voted against and Mr. R. C. Maumatharayan refrained from voting."

Considering that on the original occasion at the meeting held on 13th December 1946 by the Urban Council there was a minute of the decision taken to levy entertainment tax at 20 per cent. and thereafter a resolution to that effect in the proper form, and having regard to the fact that the 1946 resolution was passed by the Urban Council, Jaffna, which was the

predecessor of the Municipal Council, the contention of the defendant that no proper resolution was passed by the Municipal Council to enable it to levy entertainment tax appears to me to be sound. The fact that the original resolution was one by the Urban Council while the present plaintiff is the Municipal Council would seem, if at all, to buttress this contention still further. In these circumstances, the learned District Judge was right in holding that the appellant Council was not entitled to levy entertainment tax in the absence of a proper resolution.

It was contended by Mr. Renganathan on behalf of the appellant that, if the so-called resolution on which the Municipal Council relied to levy entertainment tax at 25 per cent. was not in order, it was entitled, by virtue of the earlier resolution of the Urban Council, to whose rights the Municipal Council succeeded, to levy such tax at the rate of 20 per cent. While there is substance in this argument I see that there is a difficulty in the way of the appellant Council in this regard too, as this matter has not been raised as an issue in the trial court. Had the issue been raised, perhaps the appellant Council may have succeeded; but as it has not been done one is not certain whether any attack would have been directed against the earlier resolution too if it had been raised. Without the defendant-respondent having had an opportunity therefore to raise any objection to such an issue in the lower court, it would not be justifiable to hold in favour of appellant's contention in this Court.

In the circumstances, the appeal is dismissed.

HERAT J.—I agree.

*Appeal dismissed.*

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