

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.Nos.6394, 6395, 8129, 8130, 8131 & 29076 of 2018

and

**W.M.P.Nos.7920 to 7925, 10108 to 10113,
34005, 34017 & 34028 of 2018**

W.P.No.6394 of 2018 :-

Puducherry Cable TV Operators
Welfare Association,
Registration No.351/2009,
Rep., by its Secretary,
T.Krishnamoorthy,
No.28, Savaripadayachi Street,
Nellithope, Puducherry-605 005.

.. Petitioner

-VS-

1.Union of India,
Rep., by its Chief Secretary,
Chief Secretariat, Goubert Avenue,
Puducherry-605 001.

2.The Secretary to the Government of Puducherry,
Local Administration Department,
Chief Secretariat,
Goubert Avenue, Puducherry-605 001.

3.The Commissioner,
Puducherry Municipality,
Kamban Kalaiarangam,
Bussy St., Puducherry-605 001.

4.The Commissioner,
Oulgaret Municipality,
Jawahar Nagar,
Kavery Nagar, Reddiarpalayam,
Puducherry-605 009.

5.The Commissioner,
Ariankuppam Commune Panchayat,
Ariankuppam, Puducherry-605 007.

6.The Commissioner,
Netapakkam Commune Panchayat,
Netapakkam, Puducherry-605 106.

7.The Commissioner,
Bahour Commune Panchayat,
Bahour, Puducherry-607 402.

8.The Commissioner,
Villianur Commune Panchayat,
Villanure, Puducherry-605 110.

9.The Commissioner,
Manadipet Commune Panchayat,
Manadipet, Puducherry-605 501.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the third

respondent vide its order dated 16.01.2018 in so far it relates to demanding of entertainment tax from the Multi Signal Operators and Local Cable Operators of Puducherry region and to quash the same.

For Petitioner : Mr.R.Sreedhar

For RR1 & 2 : Mr.J.Kumaran,
Government Advocate (Puducherry)

For RR3 to 9 : Mr.T.P.Manoharan,
Senior Counsel
for Mr.T.M.Naveen

COMMON ORDER

W.P.Nos.6394, 6395 and 29076 of 2018 are filed challenging the unanimous resolution passed in a meeting convened between the competent authority and the Cable TV Operators. In view of the fact that the entertainment tax is not paid properly to the Government, the meeting was convened between the Cable TV Operators and the authorities concerned and an unanimous resolution was passed. In W.P.Nos.8129 to 8131 of 2018, the demand notices itself are under challenge.

2.The learned counsel appearing on behalf of the writ petitioners mainly contended that the petitioners are registered Association of Multi Signal Operators and Local Cable Operators and the local body, being respondents 3 to 9 are demanding 10% as entertainment tax from the monthly subscription collected from the consumer public and as per Section 161A of the Puducherry Municipalities Act, 1973 (hereinafter referred to as “the 1973 Act”), the MSO and LCO are not authorised to collect entertainment tax from the subscribers. The Act is not certain. Since there is no provision in the law relating to local bodies for collection of entertainment tax from the cable operators, G.O.Ms.No.38/IAS/A4/2012-13 dated 19.03.2013 came to be passed for the purpose of amending the parent act, and a Committee was formed. Without giving effect to the said Government Order, the local authorities are demanding the cable operators to pay the tax. Thus, the petitioners are constrained to move the present writ petitions.

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3.The learned counsel appearing on behalf of the petitioners contended that undoubtedly the Act was amended and Section 161A was

incorporated with effect from 07.06.1999. However, the procedures for collection of tax and other methodologies were not amended with reference to the rules and an improper assessment of tax is sought to be made against the petitioners/cable operators and therefore, the amendment is required to be carried out and in this regard, a Committee was constituted and the said Committee is yet to submit its report for the purpose of making further amendments for collection of entertainment tax by following the procedures. Thus, the collection of entertainment tax, at this point of time, is improper, as there is no definite procedure for such collection even with reference to the amended Section 161A of the 1973 Act.

4.The learned counsel further reiterated that there are several issues which were discussed even during the joint meeting between the cable operators Association and the authorities competent. The authorities competent are not in a position to provide definite solution for such an improper collection of entertainment tax from the cable operators and therefore, they have insisted for making necessary amendments and to draw proper procedures for the purpose of payment of entertainment tax.

5.The learned Senior Counsel appearing on behalf of the respondents disputed the contentions raised on behalf of the petitioners in its entirety by stating that the provisions are unambiguous with reference to collection of entertainment tax, as far as cable operators are concerned.

6.Enumerating the procedures, the learned Senior Counsel solicited the attention of this Court with reference to Section 118 of the 1973 Act, which deals with “taxes to be imposed”. Section 118(1)(b) contemplates that every municipal council shall, with the sanction of and subject to such rules as may be prescribed by the Government, impose; (i) a duty on certain transfers of immovable property in the form of additional stamp duty in accordance with the provisions of Section 18; and (ii) a tax on entertainments. Therefore, the respondents are empowered to collect entertainment tax.

7.With reference to collection of entertainment tax from the Television Cable Operators, amendment was made with effect from 07.06.1999 by inserting Section 161A of the 1973 Act.

8. Section 161A is a self-contained amended provision of law which requires no further procedures, as the amount of entertainment tax to be collected as well as procedures to be followed are also enumerated and the said provision is sufficient to collect entertainment tax from the cable operators.

9. The learned Senior Counsel is of an opinion that rules were also amended and it is pertinent to note the Puducherry Municipalities (Entertainments Tax) (Amendment) Rules 1999 and the Puducherry Commune Panchayats (Entertainments Tax) (Amendment) Rules 1999 Gazette notification dated 16.12.1999, which enumerate the procedures for collection of entertainment tax and more specifically, Rules 61 to 67 deal with levy and collection of entertainment tax. Rule 61A denotes registration of Television Exhibition. Rule 61B provides payment of tax and the basis of returns and other methodologies were also contemplated including the application formats for registration/renewal of registration etc. Therefore, there is no ambiguity in respect of levy and collection of entertainment tax with reference to Sections 118 and 161A read with Rules

61 to 67. In view of these provisions, the respondents are empowered to levy and collect entertainment tax by following the procedures and on account of the pendency of these writ petitions, the Union Territory is losing Revenue to the huge extent of more than fifteen crores and thus, all these writ petitions are liable to be rejected.

10. The learned Senior Counsel appearing on behalf of the respondents reiterated that some of the writ petitions are filed by the Association challenging the notices issued to the individual Cable Television Operators. Such individual cause cannot be raised by an Association by filing a writ petition. All those writ petitions filed by the Association challenging the notices issued to the individual persons are liable to be dismissed.

11. Considering the arguments as advanced, it is to be tested whether the provisions as of now in force, are sufficient for levy and collection of entertainment tax or not.

12.It is an admitted fact that none of these amended provisions or the rules are under challenge in any of the writ petitions and therefore, the amended section as well as the consequential rules are to be applied for the purpose of collection of entertainment tax from the Television Cable Operators.

13.Section 118 of the 1973 Act contemplates taxes to be imposed and accordingly, the local body is empowered to impose tax on entertainment. Thereafter, Section 161A was inserted to impose entertainment tax on Television Exhibition specifically. The said amended Section 161A(1) enumerates that “notwithstanding anything contained in Section 161, entertainment tax on cable television exhibition of any programme, including cable television network, shall be levied at the rate of ten per cent of the amount collected by a cable operator by way of contribution or subscription or installation or connection charges or any other charges collected in any manner whatsoever from a subscriber”. Section 161A(2) denotes that “the tax levied under Section 161A shall be recoverable from the cable operator or any person providing cable television exhibition

including cable television network; and the tax liability shall not be passed on to the subscribers”.

14.Explanation for the purposes of Section 161A has also been provided. The definition for “antenna”, “cable operator”, “cable service”, “cable television”, “cable television network”, “programme”, “subscriber”, and “television exhibition” are also provided. Thus, it is unambiguous that amended provision itself is a self-contained provision with reference to imposition of entertainment tax more specifically, on television exhibition and the amount of tax to be collected is also clearly stated.

15.It is further clarified that the tax liability shall not be passed on to the subscribers. This being the factum, the rules which all are framed subsequently are to be considered. Rule 61(1) of the Puducherry Municipalities (Entertainments Tax) (Amendment) Rules 1999 and the Puducherry Commune Panchayats (Entertainments Tax) (Amendment) Rules 1999 contemplates “registration of television exhibition”. Various procedures are stated for registration and payment of tax on the basis of

returns. Formats are also published for registration, renewal of registration, certificate of registration etc. The rules amended also are crystal clear with reference to the procedures adopted for the purpose of collection of entertainment tax on television exhibition.

16.As far as the 19th March, 2013 Government Order is concerned, the Committee was constituted only for the purpose of effective implementation of the amended provision of law as well as the consequential rules. Even after the amended Section 161A of the 1973 Act and the amended Rules, the State found it difficult to collect the entertainment tax from the television cable operators. Meeting was convened between the cable TV operators Association and the officials and certain resolutions were passed and a Committee was appointed only for effective implementation of the amended provision of the 1973 Act as well as the Rules.

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17.This Court is of the considered opinion that once the provision is amended and the language employed in the amended provision is

unambiguous, then the Executives are bound to implement the provision in its letter and spirit. Dilution of law or non-implementation of the law in force by the Executives are impermissible.

18. In the present case, by conducting meetings, resolutions were passed. Subsequently, by G.O.Ms.No.38/IAS/A4/2012-13 dated 19th March, 2013, a Committee was constituted for the purpose of studying the methodology and regulating the uniform procedure for collection of entertainment tax from the cable television network operators; to bring an amendment in the existing provisions of the 1973 Act; to evolve a process for registration by the cable television network operators with the local bodies for the purpose of entertainment tax and advertisement tax; to conduct meetings of all the Commissioners of local bodies in Puducherry, Karaikal, Mahe and Yanam regions, whenever necessary; and to discuss the subject relating to assessment of collection of entertainment tax from the cable television network operators including the methodologies, framing of formula and calculation of arrears etc. The Committee has to submit its report to the Government within thirty days from the date of issue of the

notification. Even in case, certain doubts arise in the matter of the implementation of the amended provision, the Government is empowered to constitute a Committee to study the matter and submit its report within thirty days. Thus, such a study or submission of report would not have any implication in respect of the law in force and its implementation. If at all any further amendment is proposed and made, then alone, the consideration would arise and as of now, the amended Section 161A of the 1973 Act and the amended Rules are in force and therefore, as per the said amended provision, the State is empowered to levy and recover the entertainment tax on television exhibition. Therefore, the constitution of a Committee to study or examine the methodologies, which all are already prescribed for discussing the issues with the Association would not have any implication with reference to the collection of entertainment tax on television exhibition with reference to the amended Section 161A of the 1973 Act and the Rules and procedures amended on 16.12.1999.

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19.The contention of the petitioners that the Committee was constituted to study the methodologies and till such time the Committee

submits its report, tax should not be collected from the Cable TV operators deserves no merit consideration. The amended provisions are not under challenge so also the Rules amended pursuant to Section 161A of the 1973 Act.

20. Reading of the amended Section as well as the consequential amended Rules would reveal that the procedures are well enumerated for the purpose of collection of entertainment tax on television exhibition and thus, there is no impediment for the authorities to collect the entertainment tax on television exhibition by following the procedures contemplated under the amended Act and Rules.

21. The Hon'ble Supreme Court in the case of ***Mathuram Agrawal vs. State of Madhya Pradesh*** reported in (1999) 8 SCC 667, held as follows:-

“12.The statute should clearly and unambiguously convey the three components of the tax i.e. the subject of the tax, the person who is liable to pay the tax and the rate at which the tax is to be paid. If there is any ambiguity regarding any of these

ingredients in a taxation statute then there is no tax in law. Then it is for the legislature to do the needful in the matter.”

22.As far as the writ petitions filed by the Association in respect of the individual notices, the writ petitions itself are not entertainable. An aggrieved person alone is entitled to approach the Court in a writ petition. In respect of the individual notices issued by the competent authorities, an Association cannot be construed as an aggrieved person. Thus, all those writ petitions are not entertainable and liable to be rejected. In respect of the other writ petitions, the reliance placed by the writ petitioners in respect of the appointment of the Committee in G.O.Ms.No.38.IAS/A4/2012-13 has no relevance as far as the amended provisions of the 1973 Act as well as the Rules are concerned. The law as of now is unambiguous that the Union Territory is empowered to collect entertainment tax on television exhibition by invoking the provisions of Section 161A of the 1973 Act and the Puducherry Municipalities (Entertainments Tax) (Amendment) Rules 1999 and the Puducherry Commune Panchayats (Entertainments Tax) (Amendment) Rules 1999. This being the factum as well as the legal

provisions which all are in force, this Court has no hesitation in arriving the conclusion that the writ petitioners as well as the members of the petitioner-Association are liable to pay the entertainment tax on television exhibition as contemplated under the Act and Rules and thus, the respondents are empowered to collect the same by following the procedures.

23. Accordingly, all the writ petitions are devoid of merits and stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes
Speaking Order

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14.06.2021

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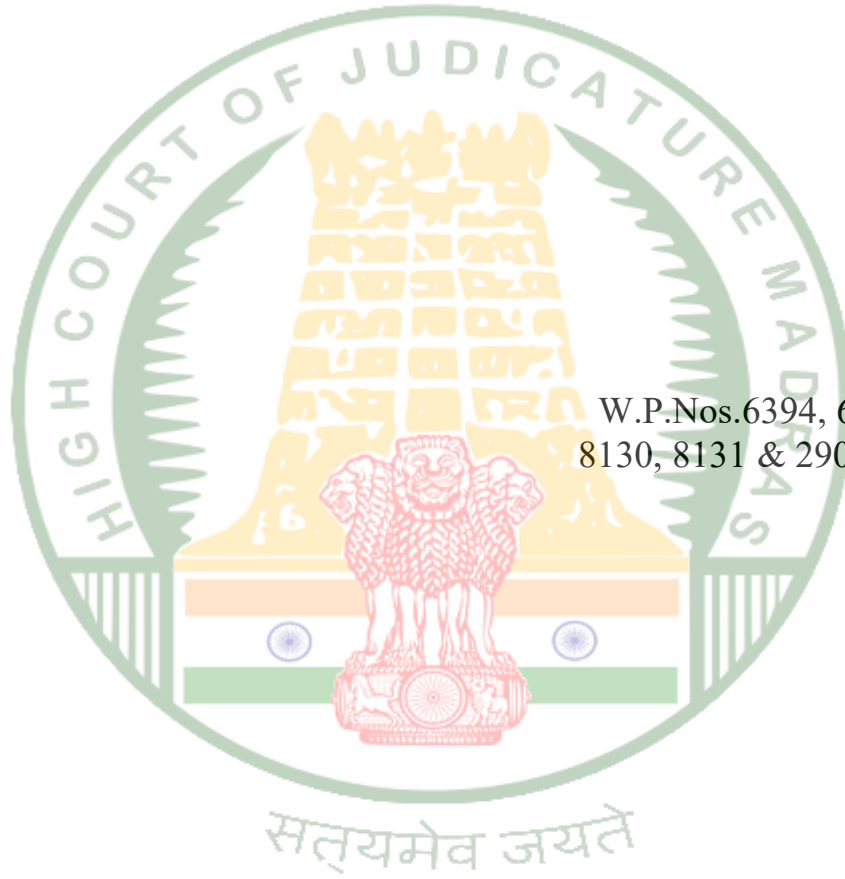
To

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W.P.Nos.6394 of 2018 etc., batch

S.M.Subramaniam, J.

(abr)



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