

S.S.Kilaje

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

WRIT PETITION NO. 1754 OF 2009

Santacruz Gymkhana .. Petitioner
Versus
State of Maharashtra and Anr. .. Respondents

**WITH
WRIT PETITION NO. 1443 OF 2005
WITH
INTERIM APPLICATION NO. 1804 OF 2020
IN
WRIT PETITION NO. 1443 OF 2005**

Bombay Presidency Golf Club Limited and Anr. .. Petitioners
Versus
State of Maharashtra and Anr. .. Respondents

**WITH
WRIT PETITION NO. 1758 OF 2006**

Bombay Presidency Radio Club Limited and Anr. .. Petitioners
Versus
State of Maharashtra .. Respondent

**WITH
WRIT PETITION NO. 1767 OF 2006**

National Sports Club of India and Anr. .. Petitioners
Versus
State of Maharashtra and Anr. .. Respondents

**WITH
WRIT PETITION NO. 2040 OF 2006**

Garware Club House .. Petitioner
Versus
State of Maharashtra and Anr. .. Respondents

**WITH
WRIT PETITION NO. 2127 OF 2006
WITH
CHAMBER SUMMONS NO. 294 OF 2007
IN**

WRIT PETITION NO. 2127 OF 2006

Bombay Gymkhana Ltd. .. Petitioners
Versus
State of Maharashtra and Anr. .. Respondents

WITH
WRIT PETITION NO. 2376 OF 2006

Cricket Club of India Ltd. .. Petitioner
Versus
State of Maharashtra and Ors. .. Respondents

WITH
WRIT PETITION NO. 69 OF 2006
WITH
INTERIM APPLICATION (L) NO. 9771 OF 2022
IN
WRIT PETITION NO. 69 OF 2006

Willingdon Sports Club and Ors. .. Petitioners
Versus
State of Maharashtra and Ors. .. Respondents

WITH
WRIT PETITION NO. 87 OF 2007

Juhu Vile Parle Gymkhana Club .. Petitioner
Versus
State of Maharashtra and Ors. .. Respondents

WITH
WRIT PETITION NO. 71 OF 2007

Ajit Rodrigues and Anr. .. Petitioners
Versus
State of Maharashtra and Ors. .. Respondents

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- Mr. Nimay Dave a/w. Ms. Umangi Shah i/by Bachubhai Munim & CO. for Petitioners in WP 1767/2006
 - Mr. Vineet Naik, Senior Advocate a/w. Mr. Amod Ekhaspur, Mr. Zeeshan Farooqui and Mr. Mohit Sahani i/by Gagrats for Petitioner in WP 2376/2006
 - Mr. Mahesh Menon a/w. Mr. Pranav Chavan i/by Mahesh Menon & Co. for Petitioners in WP 1443/2005

- Ms. Hubab Sayyed i/by Thakordas and Madgavkar for Petitioners in WP 69/2006 a/w. IA (L) 9771/2022
- Mr. Rahul Nerlekar for Petitioner in WP 1754/2009 and WP 2040/2006
- Mr. Ratnesh Dube i/by Mr. S.A.Bhagwat for Petitioners in WP 1758/2006
- Mr. Bhuvan Thakker a/w. Mr. Yash Sutaria i/by Malvi Ranchoddas & Co. for Petitioner in WP 2127/2006
- Ms. Prachi Khandge i/by M.P. Vashi & Associates for Petitioner in WP 87/2007
- Mr. Nitin G. Raut for Petitioners in WP 71/2007
- Mr. Abhay L. Patki, Additional Government Pleader a/w. Mr. Himanshu Takke, AGP for Respondents – State

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**CORAM : K. R. SHRIRAM &
MILIND N. JADHAV, JJ.**

DATE : 14th JULY, 2022

P. C. :

WRIT PETITION NO. 69/2006 a/w. IA(L)/9771/2022

1. Ms. Hubab Sayyed seeks leave to withdraw writ petition No. 69 of 2006 along with interim application (L) No. 9771 of 2022. Petition as well as interim application dismissed as withdrawn.

WRIT PETITION NO. 87 OF 2007 :

2. Ms. Prachi Khandge states in writ petition No. 87 of 2007, apart from the demand of entertainment duty on billiard tables, petitioner is also challenging action taken for water sports activity because of the swimming pool in the club premises. This petition be de-tagged and listed on **21st July, 2022** for hearing.

WP 1767/2006, WP 1754/2009, WP 1443/2005, WP 1758/2006, WP 2040/2006, WP 2127/2006, WP 2376/2006, WP 71/2007

3. As regards the remaining 8 petitions listed today, the issue raised is common, i.e.,

(a) whether the Collector (Entertainment Duty Branch) can demand from petitioners entertainment duty on billiard tables kept at the club premises for the exclusive use of its members by equating it to a pool parlour; and

(b) whether the facility of the billiard tables provided by petitioners in their respective clubs can be treated as 'entertainment' for the purpose of Bombay Entertainment Duty Act, 1923.

For the sake of convenience, we take the facts of writ petition No. 1767 of 2006.

4. Petitioner No.1 National Sports Club of India (“NSCI”) is registered under the Societies Registration Act, XXI of 1860. NSCI is run on the principles of mutuality recognized in law which excludes chargeability or levy of any entertainment duty or tax under the Bombay Entertainment Act, 1923 (“**said Act**”). NSCI is not established with the object of carrying on any business or with the object of making profits. NSCI collects money from its members and applies it for their benefit not as shareholders but as persons who put up the fund and makes no profit. The members, have provided to themselves facilities, privileges and conveniences which includes billiard tables.

Under its charter, NSCI is not enabled to carry on any business or commercial activities and if there is any surplus left from the contributions made by the members and expenses incurred for providing facilities, privileges and conveniences to the members, the surplus is not distributed amongst the members.

5. The facilities of NSCI are available only to the members of NSCI and to the guests of those members, if accompanied by the members. In other words, it is not open to the general public. As part of the various privileges, NSCI had installed five billiard tables at the club premises available to be used by its members on first come first basis on a nominal charge of Rs.7/- per frame. Mr. Dave states that this charge also had to be fixed otherwise the facility could be misused and to partly recover the cost of repairs and maintenance to the tables, replacement of the cues and the balls.

6. NSCI received a communication dated 17.12.2004 from respondent No. 2, i.e., the Collector (Entertainment Duty Branch) alleging that in view of the provisions of section 2(1)(b-1)and (b-2) and section 3(9) of the said Act, as amended by ordinance dated 29.05.1999 on pool parlour, an entertainment duty of Rs. 5,000/- per month per pool table/billiard table is payable before the 10th of every month. By the said communication, NSCI was also called upon to

furnish details regarding pool/ billiard tables in NSCI's premises within 7 days of receipt of the said letter failing which, respondent No.2 will recover entertainment duty with penalty under section 9(a) of the Act.

7. NSCI's replied denying that any entertainment tax was payable. NSCI received another notice dated 02.05.2006 calling upon NSCI to pay a sum of Rs. 3,50,002/- towards entertainment duty. NSCI was called upon to make the payment along with interest, failing which NSCI was threatened with action under section 267 of Maharashtra Land Revenue Code, 1966. NSCI thereafter approached this Court by this writ petition. Prior to NSCI filing this petition, another petitioner had already approached this court and rule had been issued.

8. The facts in these petitions are identical to the facts in the case of *Gondwana Club Vs. State of Maharashtra and Ors.*¹. Though, Mr. Patki tried to defend the action of respondents, in fairness agreed to query posed by the court, that the law as laid down by the Nagpur Bench of this Court in *Gondwana Club (supra)* will squarely apply to these petitions as well. Paragraphs 5 and 6 of *Gondwana Club (supra)* read as under :-

“5. The word “entertainment” is defined by the provisions of Section 2(a) of the Act. The relevant provisions of Section 2(a) of the Act provide that entertainment includes any exhibition, performance, amusement, game or sport to which persons are admitted for payment. In the instant case,

¹ 2017(2)Bom.C.R.820

we are concerned with the pool-game. Pool-game is defined by Section 2(b-1) which means a game played on a pool table or billiards table or any table by whatever name called. A pool-game is played in pool parlour and according to the Entertainment Tax Inspector, the petitioner-Club operates a pool parlour in the club and in the said pool parlour, the billiards tables are provided. Under Section 2(b-2) of the Act a 'pool parlour' means a place of entertainment wherein one or more tables are provided for playing a pool-game for which the persons are required to make payment in some manner or form. It is apparent from a reading of the provisions of Section 2(a), 2(b-1) and 2(b-2) of the Act that for an entertainment including a pool-game in a pool parlour, a person is required to be admitted only on payment in some manner or form. Section 3 of the Act, which is the charging section provides that entertainment duty could be levied and paid to the State Government for admission to entertainment, including the pool-game entertainment. Section 4 of the Act provides for the method of levy of duty and it further provides that no person other than a person who has to perform some duty in connection with an entertainment or a duty imposed upon him by law, shall be admitted to an entertainment except with a valid ticket or complimentary ticket. On a combined reading of the provisions of Section 2(a), 2(b-1), 2(b-2), 3 and 4 of the Act, it is clear that entertainment duty could be levied only if the entertainment is provided on payment. It would now be necessary to consider whether entertainment is provided by the petitioner-Club to the public, on payment. It is not the case of the respondents that the billiards tables in the club are permitted to be used by the public on payment. It is also not the case of the respondents that the members of the club, for whose entertainment and recreation the billiards tables are provided, are required to pay separately for using the billiards tables. On a reading of the rules of the petitioner-Club, it appears that only the regular members of the club, their guests, and the service members are permitted to use the facilities provided by the club. It is stated on behalf of the petitioner that the members of the petitioner-Club mutually provide for themselves, certain facilities that could be exclusively used by them and are not available to the public, even on payment. As per the test laid down by the Hon'ble Supreme Court in paragraph 12 of the judgment in the case of M/s Geeta Enterprises (Supra) a show, performance, game or sport should contain a public colour, in that, the show should be open to public in a hall, theatre or any other place where members of the public are invited, or attend the show. The said test, as laid down by the Hon'ble Supreme Court for ascertaining whether a show, game or sport could fall within the legal connotation of the word "entertainment" as defined under the Act, is not satisfied in the circumstances of the present case as the billiards tables in the petitioner-Club cannot be used by the

public at large. The public is neither invited to use the tables nor is permitted to use them. The billiards tables are provided only for the members of the petitioner-Club with a view to achieve the object of the club of providing social entertainment and physical and mental recreation. The Entertainment Tax Inspector has levied the duty on the premise that the petitioner runs a 'pool parlour' in the club where the billiards tables are provided. Under Section 2(b-2) of the Act, a pool parlour would be a place of entertainment where tables are provided for playing a pool-game for which payment is necessary. It is not the case of the respondents that payment is made by the public for using the billiards tables for the pool-game. The billiards tables in the petitioner-Club would not be a game or sport to which persons are admitted for payment and hence, the same cannot be considered as entertainment for which duty is leviable under Section 3 of the Act, more so when the pool-game or tables do not satisfy the tests as laid down by the Hon'ble Supreme Court in paragraph 12 of the judgment in the case of M/s. Geeta Enterprises (supra). Apart from the fact that the aforesaid game in the club does not contain a public colour, the further test that the exhibitor should derive some benefit in terms of money even if the admission to the hall is free, is also not satisfied as the club is not benefited in terms of money by the use of the billiards tables by the members of the club. We are not inclined to accept the submission made on behalf of the respondents that since the members are required to pay some monthly charges to the club, they are admitted for payment and the pool-game in the club would be an entertainment, specially when the tests laid down by the Hon'ble Supreme Court are not satisfied and it is not disputed that the members of the club mutually provide the facilities to be used exclusively by themselves and the same are not made available to the general public, even on payment.

6. *Since the action of the Entertainment Tax Inspector of initiating proceedings against the petitioner-club for payment of entertainment duty is bad in law, the impugned demand notices are hereby quashed and set aside."*

(emphasis supplied)

9. In view of the above, we also make the rule absolute in all these eight petitions.
10. All petitions are accordingly disposed.

11. All impugned demand notices issued to each of the petitioner and warrant of attachment, wherever issued, are hereby quashed and set aside.

12. No order as to costs.

13. All interim applications also stand disposed.

[MILIND N. JADHAV, J.]

[K. R. SHRIRAM, J.]