

(1988) 09 AHC CK 0077

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 1196 of 1988

Bobby Restaurant and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-09-1988

Acts Referred:

Uttar Pradesh Entertainments and Betting Tax Act, 1979 — Section 12, 12D, 2(3), 3(6)

Citation : (1988) 2 AWC 1408

Hon'ble Judges : R.R. Misra, J

Bench : Single Bench

Advocate : Mahesh Gautam and Rakesh Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

R.R. Misra, J.—By means of this writ petition the Petitioners have challenged the order dated 11-1-1988 passed by the Collector Aligarh u/s 12 of the U.P. Entertainment and Betting Tax Act, 1979 (hereinafter referred to as U.P. Act No. 28 of 1979) levying a demand of Rs. 1,35,555/- under the said Act as well as a penalty of Rs. 2,000/- and affirmance of the said order in appeal by the State Government vide its order dated 1-6-1988 copies of which have been filed as Annexures-1 and 2 to the writ petition. The said assessment order has been passed by the Collector Aligarh on the ground that the Petitioners were exhibiting for shows of films every day to the general public in their restaurant with effect from 23-12-1986 and were obtaining payment for exhibiting the said films. It was also found that the Petitioners had managed to place certain eatables on some tables by way of pretext but on the spot no body was found taking any food. On 28-7-1987 the Assistant Commissioner Entertainment Tax Bulandshahr during the course of his inspection had found that a film was being repeatedly exhibited in the restaurant from 9 A.M. till 10 P.M. at night. After giving an opportunity to the Petitioners, the Collector found that the plea of the Petitioners that the films were only shown to the customers of the Assessee was not found

to be correct. All the arrangements that were found at the spot were such as they concerned a cinema show. Further finding has been recorded by the Collector that the restaurant was being used not only for exhibition of the films but for evading entertainment tax due against the Petitioners. It was also held that the said activity amounted to "entertainment" within the meaning of U.P. Act No. 28 of 1979 and as such the Petitioners are liable to pay the said tax which was being sought to be recovered from the Petitioners. In the impugned order the District Magistrate has also set out in detail the reasons as to how he has worked out the demand of Rs. 1,35,555/-. The State Government affirmed the said findings of the District Magistrate, Aligarh and has dismissed the appeal filed by the Petitioners. Aggrieved against the same the Petitioners have preferred the present writ petition in this Court.

2. I have heard learned Counsel for the Petitioners. The first submission made by the learned Counsel for the Assessee is that although an application for licence was given by the Petitioners yet no licence was issued by the District Magistrate. It has been mentioned in the impugned orders that the District Magistrate could not issue licence to the Petitioners because the Petitioners had not specified certain details which were necessary for issuing the licence in question. The learned Counsel for the Petitioners has, during the course of his arguments laid emphasis on the fact that despite an application having been made by the Petitioners no licence was granted by the District Magistrate. I am afraid this contention has got no relevance as regards the conduct of the Petitioners for the exhibition of the films and their liability under the aforesaid U.P. Act No. 28 of 1979.

3. The other submission made by the learned Counsel for the Petitioners is that the exhibition of films through video is not "entertainment." This contention also has got no force in view of a decision of the Supreme Court in the case of Gita Enterprises v. State of U.P. 1983 AWC 830. This decision was although rendered under the U.P. Entertainment and Betting Tax Act, 1937 yet the interpretation of the word "entertainment" by their lordships in the case still holds good. In the case of Gita Enterprises (Supra) the modus operandi of the Petitioners was as follows. A machine with a video screen was installed in the parlour of the Petitioners. The Petitioners permitted persons to enter the premises without any charge to view a show on the video which consisted mainly of sports games etc. played on the screen of the video. According to the Petitioners they did not charge any admission fee but the electronic machines imported from Japan having educational value for persons playing the games were meant to provide educational entertainment by showing sea warfare, battle field, space warfare, spots and many other things which were likely to provide both education and entertainment to the viewers, particularly to young children. The mechanism for playing the machine was so designed that a coin of 50 paise was to be inserted into a strong box built within the machine, the keys of which were with the manufacturer. After the show was over a representative of the manufacturing company would come, open the box, collect the money and pay the share of the

hirer, Petitioners out of the collected sale proceeds. The Petitioners thus contended that the manner in which the games were shown to the viewers was not "entertainment" under the said Act. After examining the various provisions of the Act and the dictionary meaning of the word "entertainment" the Supreme Court held as follows:

Thus, on a consideration of the legal connotation of the word "entertainment" as defined in various books and other circumstances of the case as also on a true interpretation of the word as defined in Section 2(3) of the Act, it follows that the show must pass the following tests to fall within the ambit of the aforesaid section:

(1) that the show, performance, games or sport, etc. must 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;

(2) that the show may provide any kind of amusement whether sport, game or even a performance which requires some amount of skill, in some of the cases, it has been held that even holding of a tombola in a club hall amounts to entertainment although the playing of tombola does, to some extent, involve a little skill;

(3) that even if admission to the hall may be free but if the exhibitor derives some benefit in terms of money it would be deemed to be an entertainment;

(4) that the duration of the show or the identity of the person who operates the machine and derives pleasure or entertainment or that the operator who pays himself feels entertained is wholly irrelevant in judging the actual meaning of the word "entertainment" as used in Section 2(3) of the Act. So also the fact that the income derived from the show is shared by one or more persons who run the show.

4. In the said decision the Supreme Court has approved a decision of this Court in the case of *Fateh Mohammad Vs. State of U.P. and Others*, : 1983 U.P. Tax Cases 339, wherein the import of the word "entertainment" was considered and it was observed as follows:

The context in which the word "include" has been used in the definition clause of the Act does not indicate that the legislature intended to put a restriction or a limitation on words like "entertainment" or "admission to an entertainment" or "payment for admission". With the advance of civilization and scientific developments new forms of entertainments have come into existence. Video games are probably the latest additions to the means of entertainments. These games require skill and precision as so many other games do. They are a source of amusement and enjoyment to those who participate in the games. Others who stand by and watch also derive some pleasure and amusement though not to the same degree. Admission to the premises where the video machines are installed may be free but payment is admittedly made if one wants to play the game. The

money charged for the use of the video machine is an admission to entertainment and the payment made by the person who uses the machine is the payment for admission. In any case it is a payment connected with entertainment which a person is required to make as a condition of attending the entertainment.

5. In view of the above authority and the finding arrived at by the authorities below in their impugned orders, in my opinion the activity of the Petitioners amounted to "entertainment" within the meaning of U.P. Act No. 28 of 1979.

6. The third submission made by the learned Counsel for the Petitioners is that u/s 12-D of the said Act, tax cannot be levied unless a finding has been recorded that the same has been fraudulently evaded. I however, find that this contention also has got no substance. The authorities below have recorded clear finding to the effect that the Petitioners have fraudulently evaded the payment of tax due under U.P. Act No. 28 of 1979.

7. The other submission made by the learned Counsel for the Petitioners is that, at any rate, the case of the Petitioners is covered by the provision of Section 3(6) of the said Act. The said provision reads as follows:

(6) Where in a hotel or a restaurant, entertainment by way of cabaret or floor show (by whatever name called, but excluding a mere band in attendance or recorded music) is provided alongwith any meal or refreshment with a view to attracting customers,. whether or not payment for admission is charged distinctly for such entertainment, twenty percent of the amount payable by the customer for such meal or refreshment or the amount charged distinctly for such entertainment, whichever is higher, shall be deemed to be the payment for admission to such entertainment and the tax shall be levied and paid accordingly." To apply the above provision, it is necessary that the entertainment in the restaurant run by the Petitioners should be by way of cabaret or floor show and that the said show is provided with any meal or refreshment with a view to attract customers. From a perusal of the writ petition and its annexure it is clear that no such factual averments are there in the writ petition nor any such point or stand was taken before any of the authorities below nor even in the grounds of the present writ petition. Hence the very basis of the said submission is absent in the present case. Findings of fact recorded by the authorities below and stated in the earlier part of this judgment also do not mention or indicate that the Petitioners were entertaining by way of cabaret or floor show. Hence this submission made on behalf of the Petitioners has also got no legs to stand upon and the same is hereby rejected.

8. No other point was pressed.

9. All the submissions made by the Petitioners fail and it is held that there is no infirmity in the impugned orders passed by the opposite-parties. In the result, the writ petition fails and is dismissed summarily.