
(1999) 01 AHC CK 0020
In the Allahabad High Court
Case No : C.M.W.P. No. 499 of 1998

Brijwasi Prasad

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 27-01-1999

Acts Referred:

Uttar Pradesh Entertainments and Betting Tax Act, 1979 — Section 15, 15(1), 30, 34A, 3A

Uttar Pradesh Entertainments and Betting Tax Rules, 1981 — Rule 24

Citation : (1999) 2 AWC 1177

Hon'ble Judges : V.P. Goel, J; Ravi S. Dhavan, J

Bench : Division Bench

Advocate : H.N. Singh, for the Appellant;

Judgement

Ravi S. Dhavan and V.P. God, JJ.—The petitioner, Brijwasi Prasad, resident of Sisawan Bazar, district Maharajganj, operates a cinema on a licence. The cinema is known as Golden Picture Palace. The cinema is running since 1976.

2. The writ petition has been filed against the order of the District Magistrate, Maharajganj, dated 15 December, 1998, Annexure-7 to the writ petition. Barring the merits of the order, at present, suffice it to say, the occasion to assail the order arose when the licence of the petitioner to operate the cinema had been suspended under the U.P. Entertainments and Betting Tax Act, 1979. Specifically, the order had been passed, and this aspect is important, u/s 15(1)(b) of the Act. Sub-clause (b), in context, gives the cause for which the licence may be suspended. This circumstance is failure to pay the tax due within the time prescribed. Thus, clearly, the impugned action had been taken by the licensing authority, i.e., the District Magistrate, on being satisfied that the petitioner had not paid the entertainment tax within the time prescribed. This was the only issue on which the petitioner had been put under notice. The notice to the petitioner is dated 17 November, 1998, Annexure-3 to the writ petition. In this notice, then; is a reference to four payments having been made by the petitioner.

These are detailed hereinafter. In this context, it may be remembered that the date mentioned against the amount is in reference to the payment it falls due ; three days after, the entertainment tax had been realised for the previous week.

Weekly Tax due	Entertainment Tax	Interest	Date	Amount
14.5.1998	18.084.46			
362.00	21.8.1998	12,480.42	187.00	21.9.1998
10.638.56	159.00	21.10.1998		
9,385.50	140.00	Total	50,588.94	848.00

3. In the notice, the petitioner was indicated that he had violated Rule 24 of the U. P. Entertainments and Betting Tax Rules, 1981 for not having paid the tax due. Rule 24 is about payment of tax in cash. The notice also mentions that for the default which had been commuted by the petitioner in not paying the tax, the reply is to be submitted within a week and the notice puts the petitioner on caution as to why penalty proceedings be not considered against the petitioner, as licensee u/s 30 of the Act. This penalty may amount to a fine not exceeding Rs. 2,000. The notice also cautions the petitioner as to why the licensing authority ought not to consider suspending the licence of the petitioner for violation which has been made under the notice. The petitioner has been further cautioned that in case he does not reply, he could face ex parts actions and proceedings. Insofar as, the notice is concerned, it is a matter of record that the petitioner had been given an opportunity to explain the defaults committed by not depositing the tax when it was due. The tax related to the periods, to be deposited, on or before 14 May, 1998, 21 August 1998; 21 September, 1998 and 21 October. 1998. corresponding to Rs. 18,084.46. Rs. 12,480.42, Rs. 10,638.56 and Rs. 9,385.50 respectively.

4. In this regard, one aspect needs to be set on the record straightway. In context of the amount specified as Rs. 18,084.46, the payment was made on 5 December. 1998 and an amount of Rs. 9,385.50 was deposited on 8 December, 1998. With the payment made on 8 December, 1998, the petitioner had also deposited interest, as was due. This part of the record is available from Annexures-5 and 6 to the petition. This part of record is also accepted by the respondents as the receipts against payments have also been appended by the respondents in reply to the petition. Insofar as payment of Rs. 12,480.42 and Rs. 10,638.56 is concerned, of an entertainment tax, which may be due on 21 August, 1998 and 21 September. 1998, the petitioner made a formal request in writing to the District Magistrate, Maharajganj, on 20 November. 1998 that because of floods and non supply of electricity, due regard be had to this and permission be granted to make payment of the balance amount in the month of January next. The petitioners commitment to make payment of the balance amount was before the licencing authority at the time when the impugned order dated 15 December, 1998 was being recorded. The balance amount related to entertainment tax represented by Rs. 12,480.42 and Rs. 10,638.56.

5. After this, the petitioner learnt that his licence was suspended by the impugned order dated 15 December. 1998 by the District Magistrate, Maharajganj, as the licencing authority.

6. The impugned order suffers from a manifest error, which is apparent on the

face of the record. It does not take into account some aspects on which there was no issue. Further, the impugned order refers extraneously to certain irregularities not part of the notice and thus, the petitioner was without an opportunity.

7. It is not the concern of the Court that the licensing authority, that is the District Magistrate, had not been made aware of the fact that prior to the impugned order, the petitioner had already deposited two payments amongst four on which it was alleged that he committed default. These were payments of Rs. 18,084.46 and Rs. 9,385.50. These payments were made with interest. In the circumstances, in paragraph 2, insofar as impugned order records that the petitioner had not made payment on four items mentioned in the notice, the order is incorrect. By the time the impugned order was being delivered, the petitioner had, in effect, made payments against two of the items. On the balance, the petitioner had made a request that he be granted time until next month as in the past, there had been an irregular supply of electricity and he had not earned sufficiently to make deposit of the tax. Petitioner's application should have been considered or rejected objectively. Thus, now, it is clear that of the four items mentioned, the petitioner had made payments against two of them. On the balance, he was seeking further time. His request had been turned down on 15 December, 1998, the date of the impugned order. The petitioner was not a defaulter or habitual defaulter, strictly, in the context of the notice which was given to him.

8. Paragraph 3 of the impugned order refers to certain irregularities which may have been committed by the petitioner, or could become the subject-matter of cognizance u/s 3A of the Act. The licensing authority had recorded that 12 seats in the cinema hall were damaged and needed attention for repair. This was an additional factor which went into the making of the satisfaction of the licensing authority to pass the impugned order. These additional factors were not the context of the notice which the petitioner was required to answer. It may be that the petitioner would be put under notice separately on any violation of the conditions of Section 3A of the Act. But to pass the impugned order without giving any prior notice to the petitioner is unjust and to take action against the petitioner is unfair. In the last two paragraphs of the impugned order, the petitioner was cautioned that the proceedings against him u/s 15 (1) of the Act are under consideration. Insofar as this aspect is concerned, Section 15 provides that if the conditions are violated, then suspension or revocation of a cinematograph licence may be considered. The impugned order does not say which of the six items mentioned, the petitioner had violated.

9. Clearly, whatever be the default of the petitioner, it related to not having deposited the entertainment tax within time. Before the impugned order, the petitioner had deposited part of the tax. On the balance, he was seeking time until the next month. The petitioner had not disputed his liability and had committed to pay. At the best, under the amended Section 34A, the petitioner

could be saddled with interest on late payment of the tax. The licensing authority apparently was conscious of the fact that the notice to the petitioner did mention interest. In this regard, reference may be had to the notice dated 17 November, 1998, Annexure-3 to the petition.

10. The appropriate course would have been that upon the petitioner having paid part of tax and an undertaking for further payment in the next month given, the suspension order should have been recalled.

11. The second proviso to Section 15 of the Act mentions that in case, the District Magistrate or the Commissioner is of the opinion that the object of the action proposed to be taken would be defeated by delay, then, the appropriate authority while or after communicating to the holder of the licence of the grounds on which the action is proposed, pass an interim order suspending the permission or the licence. Regard being had to overall circumstances with part of the tax paid and for the balance an assurance was on record, no ground was available before the District Magistrate to pass the impugned action by suspending the licence of the petitioner. In fact, the object of intending action was not being defeated. In fact, it was the other way around that the stale revenue was being lost by suspending the licence of the petitioner.

12. In the counter-affidavit, affirmed by the Entertainment Tax Officer, the suspension of the licence of the petitioner continued and, in fact, it has been justified by the Entertainment Tax Officer that the resultant action in suspending the licence of the petitioner has been correctly taken. In the counter affidavit, Annexure-3, item Nos. 9 and 11 are payments on the balance amount. Even the balance tax was paid on 28 December. 1998.

13. Learned standing counsel when required by the Court to explain why the counter-affidavit justifies the action which has been taken by the licensing authority, was unable to support the pleadings and fairly submitted that the action cannot be justified. Both, learned chief standing counsel and standing counsel present in the Court accepted that factors on which the petitioner had no opportunity to explain could not be the subject-matter of continuing suspension of the licence of the petitioner. The Court appreciates the fairness of both, learned chief standing counsel and standing counsel.

14. In the circumstances, the writ petition succeeds and is allowed. As taxes have been paid, no further comments need to be made by the Court on this aspect. The suspension so caused by the impugned order dated 15 December, 1998, Annexure-7 to the petition. Is quashed and shall take effect forthwith.

15. The writ petition is allowed with costs standing at Rs. 5,000 against the respondents.