(2008) 12 AHC CK 0180

In the Allahabad High Court

Case No : Writ Petition No. 5433 (M/B) of 1993

Dharmendra Prasad Singh APPELLANT

Vs

District Magistrate, Gonda & Anr. RESPONDENT

Date of Decision : 18-12-2008

Acts Referred:

Uttar Pradesh Entertainments and Betting Tax Act, 1979 — Section 3, 3A

Citation : (2008) 12 AHC CK 0180

Hon'ble Judges : Devi Prasad Singh, J and Satish Chandra, J

Final Decision : Allowed

Judgement

Dr. Satish Chandra, J.—Heard Sri R. P. Singh learned counsel for the appellant and learned standing counsel for the respondents.

2. Present writ petition has been preferred by the petitioner against the impugned order n dated 9111993, passed by the District Judge, Gonda where an additional tax of Rs. 43, 200/ was levied on the petitioner. s

3. The brief facts of the case are that the g petitioner is the owner and licensee of a picture hall being run under the name and style of "Vijai Picture Palace" located at Balrampur Town, District Gonda. On 9101993 at 4.40 p. m., the Inspector of District Entertainment Officer, inspected the cinema hall premises, It was found that two exit lights were fused, toilets were dirty and a few seats in the balcony were torn. The district entertainment officer for not maintaining the picture hall properly and also for the deficiency as per U. P. Entertainment and Betting Tax Act, 1979, (hereinafter known as the Act), has issued the notice and finally a sum of Rs. 43, 200/ was levied on the petitioner by the impugned order dated 9111993 (Annexure No. 1). Being aggrieved with the impugned order, the petitioner has filed the present writ petition.

4. Learned counsel for the petitioner submitted that under Section 3A of the Act, the petitioner was authorised to charge for air cooled and air condition facilities @25 paisa per ticket. The same was also to be utilized for the maintenance of

cinema premise. During inspection on 9101993, some minor irregularities were found in the cinema hall and on the spot, the opposite party No. 2 prepared inspection note and got a copy of the same received by the Manager of the Cinema Hall. They said that irregularities were minor in nature, which were corrected immediately thereafter as mentioned in the petitioner''s letter dated 11101993. The opposite parties without considering the letter dated 11101993 sent by the Manager has issued show cause notice on 25101993 on the same ground which were mentioned in the inspection note. In the said show cause notice, the opposite party No. 1 directed the petitioner to deposit the entire amount of maintenance charges realized by the petitioner from the viewer as entertainment tax. The petitioner immediately on 2711993 submitted his reply with the opposite party No. 1. Learned counsel submitted that the assessee has already utilized a sum of Rs. 32, 309/ till October 1993 for the maintenance of cinema hall. He further submitted that the irregularities found were minor in nature; during interval period, the inspection was made and the toilets were supposed to be cleaned after the interval; the repair of the seats on day to day basis was not possible and the bulbs which were fused were immediately replaced. He submitted that the cinema hall is well maintained and in good condition. The action taken by the opposite parties is against the provisions of Section 3(A) of the Act. For this purpose, he relied on the ratio laid down by this Courtin the case of Sarju Chitra Mandir, Rasra, District Ballia and another v. Commissioner of Entertainment Tax, U. P., Lucknow and others, 1996 (14) LCD 864 : (1996 All LJ 1586) where it was mentioned that state of affairs found on a single day of inspection cannot clearly indicate that no maintenance was done at all before the date of inspection. He read out the para8 of the said judgment, which is reproduced as under:

"Utilization of maintenance charges should be seen by the authorities in a reasonable manner. The cinema owner may be called upon to furnish the account of maintenance and if that is doubted, then further investigation may be made into the matter. If upon investigation the account furnished by the cinema owner is found to be incorrect or fabricated one, then the authorities may legitimately draw an inference that maintenance charges realized from the ticket holders were not either wholly or partly utilized towards maintenance. Scrutiny of the maintenance account may not be exhaustive but only one of the modes to ascertain truth and that will sufficiently indicate whether the petitioners incurred any expenditure on maintenance. Simply because the entire cinema premises were not found neat and tidy on the date of inspection, no reasonable inference can be drawn that no maintenance was done by the petitioners in the cinema building at all. The respondents are supposed to act fairly, reasonably and justly but from their approach that no expenditure was incurred on maintenance simply because there were some deficiency on the date of inspection, it can be said that they acted arbitrarily."

5. Lastly, he made a request that the impugned order demanding the entertainment tax of Rs. 43, 200/ may kindly be set aside.

6. On the other hand, the learned standing counsel supported the order of the lower authorities. He submitted that the assessee is charging 25 paisa per ticket for maintenance of the picture hall. During inspection, toilets were not neat and clean, seats were torn, exit bulbs were fused. The money charged under section 3A (b) of the Act was not properly utilized by the petitioner. He submitted that tax was demanded after proper show cause notice and by considering the reply of the petitioner.

7. We have heard the learned counsel for the parties at length and gone through the material available on record.

8. The statutory provision relating to charges for maintenance of cinema hall are as under:

"3A. Extra (charge for maintenance of cinemas and) for air cooled and air conditioned facility.

(1) Notwithstanding anything contained in this Act, the proprietor of a cinema may realise from the person making payment for admission to an entertainment in such cinema

(a) an extra charge of (one rupee and fifty paise) which shall be utilized for maintenance of the cinema premises.

(b) in case of a centrally aircooled, or centrally airconditioned cinema a further extra charge of (twenty five paise and sixty paise) for aircooling or airconditioning facility respectively during the period commencing on the fifteenth day of March in any year and ending on the fifteenth day of October next following:

Provided that the proprietor of a cinema receiving grantinaid from the State Government under any incentive scheme shall not be entitle to realize extra charge under clause (a) during the period such grantinaid is received by him.

(3) where the extra charge referred to

(a) in clause (a) of subsection (1) has not been utilized for maintenance of cinema premises.

(b) in clause (b) of subsection (1) has been realized without providing the aircooling or airconditioning facility, as the case may be,

the amount so realized shall be deemed to represent the aggregate of additional payment for admission to the entertainment and entertainment tax payable thereon."

9. In the instant case, the cinema premises was inspected by the entertainment tax inspector on 9101993 and then it was noticed that urinals were dirty and no chemicals to disinfect them and to keep hygienic condition in orders were used. Further, it was found that a few chairs were broken and torn as per the inspection report of the entertainment tax officer which is Annexure No. 3 to the

writ petition. Pursuant to this report, the District Magistrate, Gonda passed the impugned order dated 9111993 directing the petitioner to deposit a sum of Rs. 43, 200/representing extra charges towardsthe maintenance as entertainment tax within a week from the date of the said order.

10. In the facts and circumstances of the case, no inference can be drawn that no maintenance was done by the petitioner and the extra charges recovered @25 paisa from each viewer were not utilized towards maintenance. The contention of the petitioner is that cinema requires day to day maintenance because as and when the electricity supply is stopped or the exhibition of the film is interrupted, the viewers start breaking furniture and that repair of the furniture is done throughout. It is submitted that the chairs in the balcony and in the main hall are plenty so the conclusion drawn that extra charges received by the petitioner were not utilized towards maintenance, will be wholly arbitrary and unreasonable. Expenditure on maintenance of the furniture and of the cinema premise as a whole is recurring one. It is a matter of common knowledge that in the cinema business, particularly, when the cinematograph films are exhibited in the farflung areas or in the smaller districts, the crowd of viewers is not discipline and they cause considerable breakage of furniture and damage to other fixtures and cinema premises as a whole.

11. Otherwise also, a cinema building, which is used by a number of viewers in all the shows, requires more maintenance than the buildings used for other purposes. Therefore, it will not be legitimate to say that no expenditure was made on maintenance by the petitioner at all. In this background, the discrepancies shown in the inspection report appears minor in nature and the same were cured by the petitioner soon after.

12. By considering the totality of the facts and circumstances of the case, we are of the view that the state of affairs found on a single day of inspection cannot clearly indicate that no maintenance was done at all specially when the maintenance is a regular feature. Without maintenance, cinema cannot run. Hence, it is not true that the entire maintenance charges realized from viewers were pocketed by the petitioner.

13. U. P. Entertainment and Betting Tax Rules, 1981 (hereinafter referred as Rules) read with section 3 of the Act declares that there shall be levied and paid on all payments for admission to any entertainment to the Government. So, whosoever seeks admission to cinema hall will be liable to pay tax, which shall be collected by the owner towards depositing to the State Government in the manner prescribed. Section 3A (1) (a) of the Act enables the owner of a cinema hall to realize from the person making payment for admission to an entertainment in such cinema and extra charge of 25 paise per ticket, which shall be utilized for maintenance of the cinema premises. Under the scheme of the Act, admission fee is liable to tax according to the rates of the ticket sold. But that mechanism cannot possibly be applied to the receipt of maintenance. There may be possibility that extra charges for maintenance accumulated specially

when cinema premise some times may not require maintenance and in that situation the cinema owner cannot be burdened with greater liability, because, no malafide can be attributed in that situation. Therefore, it is reasonable to hold that deeming provision under clause (a) has been made to retrieve the unutilized money amounts towards the tax. In such situation, the legislature deemed to consider the said aggregate amount as the entertainment tax and charged accordingly, that is why the impugned order was passed where the petitioner was supposed to deposit the entertainment tax of Rs. 43, 200/ but that is not the case in hand. The petitioner has already utilized a sum of Rs. 32, 309/ till October 1993 for the maintenance of cinema hall. The maintenance of cinema hall is a regular feature so, there is no case made out by the respondents that the entertainment tax was evaded by the petitioner.

14. Cardinal principle of law is that a given provision is to be interpreted in a reasonable manner. Under the Act, tax is levied according to the tickets sold to each class. However, the maintenance charge @25 paise is charged uniformly. The same is to be utilized for maintenance of the cinema premises. As stated earlier that without regular maintenance cinema, hall cannot run, repair of the seats, cleanliness of the toilets etc. are recurring events and on the basis of the single day inspection, it cannot be said that the maintenance was not done at all before the date of inspection.

15. In the instant case, the discrepancies pointed out were minor in nature, which were cured by the petitioner immediately thereafter. When it is so, then we find no justification for levying the additional entertainment tax of Rs. 43, 200/. Hence the order dated 9111993 is liable to be set aside.

16. The writ petition is allowed. The order dated 9111993 is quashed.

17. No order as to costs.

