(2009) 03 AHC CK 0145

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 7338 of 2009

Girish Dhodhi APPELLANT

Vs

State of U.P.and Others RESPONDENT

Date of Decision : 06-03-2009

Acts Referred:

Uttar Pradesh Cinematograph Rules, 1951 — Rule 3(3)

Citation : (2009) 03 AHC CK 0145

Hon'ble Judges : Ashok Bhushan, J and Arun Tandon, J

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties.

2. Petitioner claims to be licensee under U.P. Cinematograph Rules, 1951 (hereinafter referred to as ''Rules, 1951'') in respect of a cinema hall namely Shree Palace, Maunath Bhanjan, District Mau. He has filed this writ petition for quashing the orders dated 18.7.2007 and dated 17.10.2008 as well as for a writ of mandamus commanding the State respondents to provide the facility of grantinaid as per the scheme notified under Government Order dated 21.7.1986. The facts in short relevant for deciding the present writ petition are as follows:

3. Petitioner alongwith others is a partner of M/s. H.J. Enterprises and is carrying on the cinema business at Maunath Bhanjan, Mau under the name and style of Shree Palace. On 21st July, 1986 the State Government came out with a scheme (hereinafter referred to as ''1986 Scheme'') for the purposes of providing financial assistance for construction of permanent cinema halls provided the exhibitor satisfied the conditions mentioned in the said scheme.

4. Motivated by the aforesaid scheme, the petitioner is stated to have filed an application on 18th November, 1988 under Rule 3(3) of the Rules, 1951 for permission being granted to construct a permanent cinema hall over Plot No. 248/249 situate in Mohalla Jahangirabad, Maunath Bhanjan, OistrictMau. Under an order dated 23.1.1990 permission to construct the cinema building was

refused by the District Magistrate in view of noncompliance of the statutory conditions.

5. Not being satisfied with the order so passed, the petitioner made a representation before the Ministry of Finance, State of Uttar Pradesh. The representation remained pending. The petitioner simultaneously moved an application for grant of financial assistance for exhibiting the feature film, which also remained pending with the District Magistrate, Licensing Authority under the Rules, 1951.

6. It was found that the petitioner had constructed and had run the cinema hall without obtaining the permission under Rule 3(3) of the Rules, 1951 from the concerned authority. The petitioner, therefore, made an application for exemption being granted and the offence being compounded. On the application of the writ petitioner, the State Government passed an order dated 25.4.1990 providing that compounding fee be deposited by the petitioner to the tune of Rs. 50,000/ and exemption be granted under subrule (3) of Rule 3 of the Rules, 1951 with a further specific condition that the petitioner shall not be entitled for any incentive under grantinaid scheme. For the same petitioner was required to furnish a written undertaking. The petitioner was directed to deposit the sum of Rs. 50,000/ as compounding fee alongwith an undertaking, noticed above, in the office of the District Magistrate.

7. Against the order of the District Magistrate dated 23.1.1990 and the order of the State Government dated 25.4.1990 the petitioner filed Writ Petition No. 12796 of 1990 with the following prayer;

"(a) Issue a writ of certiorari quashing impugned orders dated 23.1.1990 and 25.4.1990 passed by the respondent Nos. 1 and 2 respectively.

(b) Issue a writ of mandamus directing to the respondent No. 2 to issue ij the cinematograph exhibition licence to the petitioner ignoring order dated 25.4.1990 of respondent No. 1 and also to accord approval under Rule 3(3) of the rules.

(c) Issue any other writ, order or direction, as the Hon''ble Court may deem fit and proper in the circumstances of the case.

(d) Award the cost of the petition to the petitioner."

8. A Division Bench of this Court by means of order dated 18.5.1990 stayed the operation of the order dated 25.4.1990 passed by the State Government, referred to above. The petitioner is stated to have been permitted to run the cinema in the aforesaid hall but was not provided any financial assistance under 1986 Scheme. The other partner of the petitioner namely Harish, therefore, submitted an application in the aforesaid writ petition, for financial assistance being provided as per the 1986 Scheme. A Division Bench of this Court on the said application passed an order on 20th July, 1990 which permitted the petitioner to furnish security for the amount of entertainment tax collected by him during the pendency of the writ petition, to the satisfaction of the licensing

authority, which may be other than cash or bank guarantee. It was also provided that the licence of the petitioner shall not be cancelled if he complies with the conditions stated in the order dated 17.7.1990. According to the petitioner the State Government came out with a new scheme for providing grantinaid on 18.7.1989. Under the aforesaid arrangement the petitioner is stated to have run the cinema without making payment of entertainment tax collected from the cinema goers and in lieu thereof only furnished security for the like amount to the satisfaction of the authority concerned.

9. Writ Petition No. 12796 of 1990 filed by the writ petitioner was ultimately dismissed by the Division Bench of this Court on 17.10.2001. The petitioner made an application for recall of the order dated 17.10.2001 only on 3.3.2005. This recall application was dismissed by the Division Bench vide order dated 24.5.2005 after providing that the petitioner may file a fresh petition in case any cause of action survives or new cause of action has arisen. A copy of the order passed on the application has been enclosed as Annexure19 to the present writ petition.

10. After dismissal of the aforesaid writ petition a letter dated 18th May, 2005 was issued by the department requiring the petitioner to deposit a sum of Rs. 29,06,499.18 which represented the entertainment tax collected by the petitioner during the period his earlier writ petition remained pending. The petitioner, therefore, filed second writ petition, being Writ Petition No. 934 of 2005, with the following prayer:

"(i) Issue a writ, order or direction in the nature of certiorari quashing the order/ direction dated 18.5.2005, 23.3.1990 & 25.4.1990 (Annexure 10, 12 and 21) passed by the respondent Nos. 2 and 1 respectively.

(ii) Issue a writ, order or direction in the nature of mandamus directing to the respondent No. 2 to provide benefit of the grantinaid scheme dated 21.7.1986 to the petitioner forthwith.

(iii) Issue a writ, order or direction in the nature of mandamus directing to the respondent No. 2 not to initiate recovery proceedings against the petitioner in pursuance thereof.

(iv) Issue a writ, order or direction in the nature of mandamus directing to the respondent No. 2 not to compel the petitioner to deposit the alleged balance entertainment tax as contained in the direction dated 18.5.2005.

(v) Issue any other suitable writ, order or direction that this Hon''ble Court may deem fit and proper in the facts and circumstances of the case.

(vi) Award cost of the petitioner in favour of the petitioner."

11. An interim order was passed in the aforesaid writ petition on 10.8.2005, which according to the petitioner required him to deposit 50% of the total amount. Since the petitioner could not deposit the said 50%, the Division Bench

of this Court dismissed the writ petition vide order dated 17.5.2006, which reads as follows:

"Earlier Writ Petition No. 12796 of 1990 was dismissed on 17th October, 2001 by bench presided over by Hon. A.N. Trivedi and Hon. D.R. Chowdhary, JJ., the matter was again placed before a different bench on 11.7.2005, which has been released and ultimately assigned before this Bench presided over by one of us (Hon. Amitava Lala, J.). The only observation was made in respect of fresh cause of action, if any. According to the writ petitioner, the present writ petition was filed only when the citation was issued upon him. We wanted to entertain it on condition of payment of depositing 50% of the claimed amount of the citation being Rs. 29,06,499.18 but learned Standing Counsel contended before this Court that no such payment was made. The petitioner contended that he has made payment of only sum of Rs. 1,20,000. However, it is clear that it is a case of noncompliance of order passed by this Court. Therefore, defaulter cannot be treated as aggrieved. In such circumstances, we cannot pass any order in connection with main relief about citation. Learned Standing Counsel contended that they have given representation before the appropriate authority in spite of pendency of the writ petition. Learned Counsel appearing for the petitioner also contended that he has not a penny to pay, if there is necessity the appropriate land, which is according to him, can over the claim of the State can be sold out for the purpose of realization of amount. We cannot interfere in respect of the same. It is matter between the petitioner and State in respect of due compliance of the citation.

Therefore, the writ petition is dismissed.

Interim order, if any, stands vacated.

No order is passed as to costs."

12. In paragraph 42 of the writ petition it has been stated that the petitioner during this period had approached the State Government for providing grantinaid to the petitioner as has been done in respect of other cinema halls. Reference has been made to the letter dated 10.12.2006 forwarded by respondent No. 2 to respondent No. 1 and to the letter dated 23.3.2006 sent by respondent No. 1, which according to the petitioner records that no decision on the application of the petitioner for providing grantinaid could be taken in view of the pendency of the writ petition. Thereafter the application of the petitioner is stated to have been rejected on 18.7.2008. The review application made by the petitioner has also been rejected on 17.10.2008.

13. The petitioner has, therefore, now approached this Court by means of the present writ petition for quashing the orders dated 18.7.2007 and dated 17.10.2008 with a further prayer to provide the facility of financial assistance under the grantinaid scheme enforced on 21.7.1986.

14. The order dated 18.7.2007 is the order of the State Government rejecting

the application of the petitioner on the ground that the petitioner is not entitled for the grantinaid in terms of the Government Order applicable. The order dated 17.10.2008 is the letter informing the petitioner that his review application has been rejected by the State Government as no good ground for reconsideration of the order dated 18th July, 2007 was made out.

15. Counsel for the petitioner vehemently contended before this Court that his claim for financial assistance being provided, under the 1986 Scheme has not been considered on merits by this Court or by the State Government and, therefore, the orders impugned in the present writ petition be set aside with a further direction upon the respondents to provide financial assistance to the petitioner in terms of the 1986 Scheme.

16. The prayer so made on behalf of the writ petitioner is opposed by the Standing Counsel and it is submitted that the petitioner, having admittedly acted in violation of Rule 3(3) of the Rules, 1951 and having not paid the entertainment tax collected during the period his earlier writ petition was pending (which has since been dismissed on 17.1.2001), is not entitled to any relief.

17. We have heard counsel for the parties and have examined the documents on record of the petition. Following facts emerge:

18. The petitioner had violated the provisions of Rule 3(3) of the Rules, 1951 by constructing and running the cinema hall without the permission of the authority and he was challaned as early as in the year, 1990. On his application for compounding of the said offence, the State Government passed a reasoned order imposing a penalty of Rs. 50,000/ with a further stipulation that the petitioner shall not claim any financial assistance qua construction of cinema hall provided under the scheme of the State Government. The orders so passed by the State Government dated 25.4.1990 was subjected to challenge by the petitioner by means of his first Writ Petition No. 12796 of 1990. The writ petition remained pending before this Court for 11 years and during this period the petitioner continued to exhibit the cinema in the hall without depositing the entertainment tax collected from cinema goers and in lieu thereto only furnished security other than cash or bank guarantee in terms of the interim order passed in the said writ petition on 20.7.1990. The writ petition was dismissed on 17.10.2001. The recall application filed therein was also dismissed on 24.5.2005.

19. When the petitioner was called upon to deposit the entertainment tax, which he had collected during the pendency of the first writ petition under interim order of this Court, he filed the second writ petition, being Writ Petition No. 934 of 2005 with the prayer quoted above. The petitioner not only challenged the demand made but also the order dated 25.4.1990 with a further specific prayer for a mandamus being issued to the State respondents to provide financial assistance under 1986 Scheme. The writ petition was ultimately dismissed by this Court on 17th May, 2006 after noticing that the petitioner has failed to

deposit even a single penny,despite dismissal of his first writ petition in the year 2001, towards entertainment tax. His prayer for financial assistance being provided under the 1986 Scheme also stood refused with the dismissal of the writ petition. This order has been permitted to become final by the petitioner inasmuch as the same has not been subjected to any further challenge. Once the relief prayed in the writ petition for financial assistance being provided under the 1986 Scheme stood refused under the order of this Court with the dismissal of the Writ Petition No. 934 of 2005, it is neither open to the petitioner to claim any such relief by way of application before the State Government nor any orders in that regard were warranted. The dismissal of the writ petition closes the chapter so far as the benefit of 1986 Scheme is concerned.

20. The petitioner only on the strength of the interim order of this Court, passed in the first writ petition, continued to exhibit the cinema in the aforesaid picture hall and, despite collecting entertainment tax from cinegoers, did not deposit the same with the authority concerned even after his petition was dismissed.

21. This third writ petition is only an attempt to delay the recovery of amount of entertainment tax which the petitioner had collected from the cinema goers under the interim order of the High Court, referred to above, but not deposited with the department. The petitioner has taken benefit of the interim order which was granted in his favour by running the cinema for more than 17 years without making payment of the collected entertainment tax even when the writ petitions have been dismissed in the year 2001 and thereafter his second petition was dismissed in 2006.

22. We may further note that the order dated 25.4.1990 has also become final between the parties with the dismissal of the said writ petitions, which amongst other specifically provided that the compounding under Rule 3(3) would be permitted only if the petitioner gives an undertaking that he shall not claim financial assistance from the State Government.

23. From the reading of the 1 986 Scheme we find that the financial assistance is to be provided only on fulfillment of the conditions mentioned Clauses 5 (Ga), 5(Anga) and Clause 6 of the 1986 Scheme, which read as follows:

24. From the facts admitted on record it is admitted that petitioner was not granted permission under Rule 3(3) of the Rules, 1951 vide order of the District Magistrate dated 9.4.1990 and the writ petition filed against the said order has been dismissed, which order has been permitted to become final, as such condition No. 6 of the scheme has been violated. Similarly, it is further admitted on record that no such permission has been granted to the petitioner by the District Magistrate till date. The amount of entertainment tax collected by the petitioner has also not been deposited with department, as such clause 5 of the scheme has been violated.

25. In view of the aforesaid facts, State Government is legally justified in recording a finding that the case of the petitioner is not covered by 1 986

Scheme and has, therefore, rightly refused to provide any financial assistance to the petitioner under the order dated 18.7.2007.

26. Similarly, the order refusing to review the order as per the letter dated 17.10.2008 cannot be said to be illegal or arbitrary in any manner. The orders are based on true and correct interpretation of the 1986 Scheme.

27. In view of the aforesaid, we see no reason to interfere with the orders dated 18.7.2007 and dated 17.10.2008 in the facts of the present case.

28. In the totality of the circumstances noticed above, we record that the writ petition lacks merit, and even otherwise petitioner is not entitled to any equitable relief under Article 226 of the Constitution of India. Writ petition is, therefore, dismissed with cost.

