(2010) 07 AHC CK 0393

In the Allahabad High Court

Inderjeet Singh APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 05-07-2010

Acts Referred:

Citation : (2011) 38 VST 493

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

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard Sri Hari Om Singh, learned Counsel for the petitioner and the learned Additional Chief Standing Counsel.

2. The respondent No. 1 had issued an order dated 18th July, 1989 where it was provided that hundred per cent rebate on entertainment tax will be given to the cinema halls which will be constructed in the rural areas. In pursuance of the said order dated 18th July, 1989, the petitioner has moved an application for construction of a cinema hall in the local area Manhapur, District Gonda. While the application of the petitioner was pending, the said G.O. dated 18th July, 1989 was amended by another G.O. dated 14th May, 1992 where the tax was reduced to 75% for three years. By an order dated 16th August, 1993, the District Magistrate, Gonda has permitted the petitioner to construct the cinema hall known as ''Inder Lok''. Thereafter, the petitioner moved an application for grant of license on 13th December, 1994 and that too was accepted and the license was granted on 4th February, 1995. However, while considering the grant-in-aid, the District Magistrate relied upon the amended G.O.dated 14th May, 1992 and instead of granting 100% grant-in-aid in pursuance to the original Circular, granted aid to the extent of 75%. Thus, grant-in-aid reduced from 100% to 75%.

3. While assailing the impugned order, learned Counsel for the petitioner submitted that since the petitioner had moved the application within stipulated period relying upon the original Circular (Annexure No. 1), the subsequent

amendments shall not affect the right of the petitioner to receive the grant-in-aid. He submitted that in the principle of promissory estoppel, the petitioner shall be entitled for grant-in-aid on the amended Circular. Learned Counsel for the petitioner has relied upon a judgment of the Division Bench of this Court passed in Writ Petition No. 4502 of 1993 (M/B), Chandrika Prasad Verma v. State of U.P. and Ors. In the case of Chandrika Prasad Verma, the application for permission was moved on 9th July, 1991 and it was granted on 24th February, 1992. Submission is that in the present case, the application was moved on 24th June, 1991. Relying upon the original Circular with regard to grant-in-aid, it has been emphatically argued that right from constructing the picture hall till the grant of license as well as the construction of cinema hall, at no stage, the petitioner was informed that the grant-in-aid from 100% to 75% was reduced on the basis of amended Circular of the year 1992.

4. Learned Additional Chief Standing Counsel submitted that grant-in-aid was given on the basis of amended Circular dated 14th May, 1992. It has been submitted that the delay caused because of certain defects sought to be removed by the petitioner as pointed out by the district authority. However, the attention of the Court could not be invited to any material pointing out any defect in the original application moved for grant to extend the grant-in-aid in pursuance to the original Circular dated 18th July, 1989. A perusal of the Circular dated 18th July, 1989 shows that the State Government had provided grant-in-aid U.P. to 100% in the form of tax rebate who constructed the picture hall in the rural area who have applied for the same on or before 1st April, 1989 and for that purpose moved the application. The submission is that the petitioner has moved the application within the stipulated period and he is entitled for 100% grant-in-aid. Reliance has been placed by the petitioner in the case of Chandrika Prasad Verma (supra). A perusal of the aforesaid judgment shows that the Division Bench opined that the application was moved for grant-in-aid in pursuance of the Circular within the stipulated period and also moved the amendment in the year 1992. The petitioner shall be entitled to incentives. The relevant portion of the judgment of Chandrika Prasad Verma is reproduced as under:

In the present case, the application for permission was moved on 9.7.1991 and the permission was also granted on 24.2.1992 under the Government Order dated 18.7.1989. The petitioner''s license was also issued on 4.8.1993 within the period provided under the Government Order dated 18.7.1989. In this view of the matter, the petitioner has complied with all the requisite requirements provided under the Government Order dated 18.7.1989. The above situations show the intent of the petitioner to establish a cinema hall persuaded by the incentive provided under the Government Order dated 18.7.1989 to the extent of 100 percent of tax in the first two years. In the circumstances, Government is bound by its promise to provide grant-in-aid to the extent of 100 percent of the tax in the first two years to the petitioner who acted on the Government Order dated 18.7.1989, constructed and run the cinema hall. Subsequent Government Order dated 4.5.1992 is not applicant to the petitioner''s case.

We have also gone through the decision of this Court passed in Writ Petition No. 369 of 1994. In the said decision the principle of promissory estoppel has not been considered at all. Admittedly, in the above case, the petitioner has applied for the fresh permission after the Government Order dated 14.5.1992 and thereafter the construction was made. Therefore, the said decision is not applicable in the present case.

In view of the above, we are of the opinion that the petitioner was entitled for 100% exemption for the first and two years in view of the Government Order dated 18.7.89.

In the result, writ petition is allowed. The impugned order dated 28.9.1993 passed by the District Magistrate and notice/order dated 29.9.93 are hereby quashed.

5. Moreover in the Circular dated 18th July, 1989 under the head of ''eligibility'', it was mentioned that the benefit of the scheme will be given to the persons who have moved an application on or before 1st April, 1989 and has obtained the license for running the cinema hall from the period from 1st April, 1990 to 31st March, 1995. For the purpose, the application for approval of the site-plan was 31st March, 1994. It was specifically mentioned that the date for the purpose of benefit of the scheme will be determined the date when the application for site-plan and building specification was made. Undoubtedly, in the instant case, the petitioner completed the scheme of building on 13.12.1994 and applied for license which was granted on 4.2.1995, hence the petitioner is entitled for the benefit of original G.O. Dated 18th July, 1989. Further, it is mentioned that similar issue has come U.P. before this Court in the case of Kamla Palace v. State of U.P. and Ors. 2000(4) A.W.C. 3127 where it was observed as under:

14. Thus, the respondents are bound by the incentives announced by the State Government in the Government Order dated 18.7.1989. The changed rates of the grant-in-aid as per G.O. Dated 14.7.1992 would be applicable only where a person decides to construct the new cinema building on or after 14.7.1992 and applies for grant of permission under Rule 3 of the Rules on or after that date. The decisions relied upon by the learned Standing Counsel, have all been considered by the Hon''ble Supreme Court in the case of M/s. Pawan Alloys and Casting Pvt. Ltd., Meerut etc, etc. Vs. U.P. State Electricity Board and others, and after considering the same the Hon''ble Supreme Court had laid down the above principles.

15. It may be mentioned that the decision in the case of Pankaj Jain Agencies v. Union of India and Ors. JT 1994 (5) SC 64 relied upon by the learned standing Counsel is not at all concerned with the issue of promissory estoppel and has no bearing to the issues involved in the present petition.

16. In view of the foregoing discussions, the writ petition succeeds and is allowed. It is held that the Government Order dated 14.7.1992, would not be applicable to the petitioner. The condition mentioned in the order dated

16.7.1993 (filed as Annexure-9 to the petition) in so far as it grants the benefit of grant-in-aid to the extent of 75% of the entertainment tax in the first 2 years is quashed and we hold that the petitioner is entitled for grant-in-aid of 100% of the amount of entertainment tax in the first 2 years. The various orders, which are impugned, namely 22.7.1993, 13.9.1993 and 22.9.1993 cannot be sustained and are hereby quashed.

6. The controversy in question seems to be squarely covered by the earlier division bench judgment of this Court.

7. Accordingly, the writ petition deserves to be allowed, hence allowed.

8. A writ in the nature of certiorari is issued quashing the impugned order dated 4th February, 1995 passed by the District Magistrate, Gonda with all consequential benefits. A writ in the nature of mandamus is issued directing the respondent to reconsider the case in the light of observations made herein above and pass a fresh order expeditiously within two months from the date of receipt of certified copy of this order and communicate the decision.

9. It is clarified that in case 75% grant-in-aid has already given in the form of tax rebate, then the respondent shall pass appropriate order with regard to remaining tax rebate as per G.O. Dated 18th July, 1989.

