(2009) 11 AHC CK 0020

In the Allahabad High Court

Jafar and Others etc. APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 24-11-2009

Acts Referred:

Uttar Pradesh Cinemas (Regulation of Exhibition by Means of Video) Rules, 1988 — Rule 12
Uttar Pradesh Entertainments and Betting Tax Act, 1979 — Section 3B

Citation : AIR 2010 All 89

Hon'ble Judges : Subhash Chandra Nigam, J;Prakash Krishna, J

Bench : Division Bench

Judgement

Prakash Krishna, J.—By means of the above writ petitions, the challenge has been made to the direction dated 05.05.2006 (Annexure-5 to the writ petition) issued by respondent No. 2 and the order dated 03.05.2007 (annexure-10 to the writ petition) passed by respondent No. 1.

2. The case of the petitioners as unfolded in the writ petition is that the petitioners have been permitted by respondent No. 2 to exhibit by means of video in video cinema having capacity of 125 seats as provided under Uttar Pradesh Cinemas (Regulation of Exhibition by Means of Video) Rules, 1988. The petitioners started exhibition by means of video and have strictly complied with the provisions of the Rules laid thereunder and has regularly deposited the entertainment tax as well within time. Respondent No. 2 vide notice dated 24.02.2006 directed the petitioner to deposit the amount purporting for film development as provided u/s 3-B of the Act, 1979 within a period of one week although the petitioners are not liable to deposit the said amount. The said provision is not applicable to the petitioners. The petitioners have not realised the said amount from cinegoers. The petitioners submitted their reply to the aforesaid notice stating therein that they are not required to deposit the extra charges of film development. The reply has been duly received in the office of respondent No. 2 on 25.03.2006. The petitioners have also submitted the application before respondent No. 1 mentioning therein that they are not liable to

deposit the said amount. Respondent No. 2 vide his letter dated 5.5.2006 again directed the petitioners to deposit the amount the extra charges for film development within three days.

3. The case of the respondents as unfolded in the counter affidavit sworn by Shri O.P. Tripathi, Assistant Commissioner, Entertainment Tax, Allahabad is that the petitioners run video cinema and hold licence under Rule 12 of the U.P. Cinemas (Regulation of Exhibition by Means of Video) Rule, 1988. The Uttar Pradesh Cinemas (Regulation) Act, 1955 contains the provisions for regulating exhibition by means of Cinematographs and Video. Section 3 of the Act, 1955 provides for licence for exhibition by means of Video and Cinematographs. The procedure for grant of licence for exhibition by means of Cinematographs and Videos under the Act, 1955, is provided under the Uttar Pradesh Cinematographs Rules, 1951 and Rules, 1988. While the Rules, 1988 provides the procedure under the Act for grant of licence for exhibition by means of video in a permanent building with sitting capacity not exceeding 125 and such exhibition in all temporary building, the Rules 1951 operate with regard to sitting capacity exceeding 125 seats. The word ''Video Cinema'' has been defined under Rule 2(i) of the Rules, 1988 as under:

Video Cinema means entire place licensed for exhibition by means of video in a permanent building and includes appurtenances, plants and apparatus located therein.

4. The Video Cinema is a cinema and the petitioners being proprietor of cinema within the meaning of Section 2(m) of the Act, 1979, is liable to pay extra charge for film development u/s 3-B of the Act, 1979. The petitioners have deliberately not deposited the aforesaid extra charge at the rate of 50 paisa and therefore the action was initiated against the petitioners.

5. In exercise of powers conferred u/s 38(3) of the Act, 1979 a circular was also issued by the Commissioner, Entertainment Tax, U.P., Lucknow requiring the video Cinemas to comply with the provisions of Section 3-B of the Act, 1979 and to deposit the extra charge for film development. The impugned direction dated 05.05.2006 and order dated 03.05.2007 have been passed well in accordance with law and the same do not suffer from any error of law.

6. Heard Mr. Govind Krishna, learned Counsel for the petitioners, and Sri A.C. Tripathi, learned Standing Counsel and perused the record of the case.

7. The learned Counsel for the petitioners submits that u/s 3-B of the U.P. Entertainment and Betting Tax Act, 1979, it is provided that the proprietor of a cinema shall realise from the person making payment for admission to an entertainment in such cinema, an extra charge of fifty paise for film development. The petitioners submit that the petitioners are not "proprietor of a cinema".

8. It is contended that the petitioners are exhibiting films by means of video in

video cinema having capacity of 125 seats. It is not disputed from the side of the respondents that the petitioners are exhibiting the films by means of video in video cinema. A distinction, in other words, has been sought to be raised in "cinema" and "video cinema".

9. The learned standing counsel, on the other hand, submits that cinema has nowhere been defined. The dictionary meaning of ''cinema'' has to be taken into consideration. According to him, cinema is a motion picture theatre; motion picture industry; the art or technique of making motion pictures. According to Chambers Twentieth Century Dictionary, cinema is a building in which photographs or pictures are shown. The word ''cinema'' is an abbreviated form of cinematograph which, in its ordinary signification, includes a film exhibition. In common parlance a cinema is equated to a film exhibiting theatre.

10. Before proceeding further, it will be relevant to reproduce Section 3-B of the U.P. Entertainment and Betting Tax Act, 1979 around which the controversy revolves:

3-B. Extra charges for Film Development- (1) Notwithstanding anything to the contrary contained in this Act, the proprietor of a cinema shall realise from the person making payment for admission to an entertainment in such cinema, an extra charge of fifty paise for Film Development. (2) All moneys realised under Sub-section (1) shall be deposited with such officer or authority in such manner as may be prescribed.

(Emphasis supplied)

The question which falls for determination is whether in the words "the proprietor of cinema", ''video cinema'' or in other words ''show by videos'', is included or not? In order to determine the question, it is relevant to notice the provisions of the U.P. Entertainment and Betting Tax Act, 1979 (hereinafter referred to Act, 1979). The U.P. Cinema (Regulation) Act, 1955 (hereinafter called as Regulation Act, 1955) and the Cinematograph Act, 1952 (hereinafter called as Act, 1952).

11. The U.P. Entertainment and Betting Tax Act, 1979 has been enacted to consolidate and amend the law relating to taxes on entertainments, amusements, and on certain forms of betting in the State of Uttar Pradesh. Its applicability is not confined to cinema only, but it embraces within its scope all types of entertainments, amusements and certain forms of betting for the purposes of collection of tax thereon. It is more concern of collection of tax on entertainment etc. rather than the medium of entertainment. It is no longer in dispute that entertainment tax on video show is being paid by the petitioner like other persons.

12. After the promulgation of the Constitution of India, the matters regarding to the ''sanctioning of cinematograph for exhibition'' were included in Entry No.60 of List - I (Union List of Seven Schedule) and matters regarding the ''cinemas'' subject to the provisions of Entry No.60 of List - I, in Entry No.33 of the List - II

(State List). The Cinematograph Act, 1952 has been enacted by the Parliament and earlier Legislation i.e. Cinematograph Act, 1918 has been repealed. The Cinematograph Act, 1952 was enacted by the Government of India in which provisions relating to the Union List and State List were separated. The said Act consists of four parts; Part I deals with preliminary matters, Part II with certification of films before exhibition. Part III with Regulation of Exhibition by means of cinematographs and Part IV with repeal. The Government of India suggested to the States that they should undertake legislative exercise thereunder on the lines of Part 111 of the Cinematograph Act, 1952. In pursuance of that suggestion, the U.P. Cinemas Regulation Act, 1955 referred to as Regulation. 1955 has been enacted.

13. The word ''cinema'' has not been defined anywhere. The definition clause in Cinematograph Act, 1952 does not contain a definition of ''cinema''. However, it defines the expression the "cinematograph" in Section 2(a) as under:

(c). "cinematograph includes any apparatus for the representation of the running pictures or series of pictures."

14. An interesting controversy arose in various cases as to whether video parlour or video cassette recorder and video cassette player are included in the definition of "cinematograph" or not. The matter ultimately reached to the Apex Court in the case of M/s. Laxmi Video Theaters and Others Vs. State of Haryana and Others, The Apex Court approved the decision of Punjab and Haryana High (Court in Deep Snack Bar, Sonepat v. State of Haryana AIR 1984 Punjab and Haryana 377 and Other decisions of Madhya Pradesh and Delhi High Courts and has held that definition of the expression ''cinematograph'' as contained in Section 2(c) of Cinematograph Act, 1952 is an inclusive definition which included any apparatus for representation of moving pictures or series of pictures. The said definition cannot be confined in its application to apparatus for representation of moving pictures or series of pictures which was known on the date of enactment of the said provision. It must be given a meaning which takes into account the subsequent scientific developments in the field in accordance with the principle of statutory construction laid down in the The Senior Electric Inspector and Others Vs. Laxmi Narayan Chopra and Others, It has been held that VCR/VCP are within the ambit of the definition of cinematograph contained in Section 2(a) of the Act. The aforestated decision by the Apex Court is the complete answer to the submission of the petitioner.

15. The aforesaid decision of the Apex Court has been followed by it in State of Andhra Pradesh v. Nagoti Venkataramana (1996) 7 Supreme 13 wherein it has been held that Section 2(c) of the Cinematograph Act, 1952, defines cinematograph to include any apparatus for the representation. The video tapes come within the expression "cinematograph" in view of the extended definition in Section 2(c), which includes apparatus for the representation moving pictures or series of pictures.

16. In ''cinema'' as popularly understood, moving pictures or series of pictures are shown through projector and film. In video also, moving pictures or series of pictures are exhibited through pre-recorded tape. The common feature in video and cinema is exhibition of moving pictures or series of pictures.

17. Section 3-B of the Act, 1979 already reproduced above uses the expression "the proprietor of cinema". The word "proprietor" has been defined in the said Act u/s 2(m). It is an inclusive definition and includes any person--

(i) connected with the organization of the entertainment, or

(ii) charged with the work of admission to the entertainment, or

(iii) responsible for, or for the time being in charge of, the management thereof.

18. At this juncture, the submission that in the State of U.P., the aforestated interpretation as put by the Apex Court on ''cinematograph'' will have no application in view of the Act, 1955 needs consideration. The said Act, 1955 has been passed to make provisions for regulating the exhibitions by means of cinematographs and videos. Interestingly, in the definition clause of the Act video has been excluded from the definition of cinematograph by Clause (a) of Section 2 which reads as follows:

cinematograph includes any apparatus other than video for the representation of moving pictures or series of pictures.

19. The said Act also contains the definition of exhibition by means of video under Clause (aa) and of video library in Clause (g) of Section 2.

20. The argument is that ''video cinema'' which means an exhibition by means of video as defined in the U.P. Act, 1955 and licensed under the said Act, shows that video is not considered within ''cinema''. To put it differently, the exhibition by cinema and exhibition of moving pictures by video are two different things and the word ''cinema'' used in Section 3-B of the Act will not include entertainment through video in view of the statutory provision i.e. Act, 1955.

21. On a careful consideration of the matter, the argument of the petitioner is liable to be rejected for the reasons recorded hereinafter.

22. The U.P. Cinemas Regulation Act, 1955 has been enacted for the purposes of grant of license to an exhibition by means of ''cinematograph'' or by means of video or to keep a video library. It is a small statute which contains only 13 sections. The scheme of the said Act would show that it is merely concerned for regulating exhibitions by means of cinematograph and video, as is apparent from its aims and object. Section 3 makes obligatory to every persons to obtain license for exhibition of cinematograph, or exhibition by video, or to keep a video library. The licensing authority has been defined in Section 4 and restrictions on the power of licensing authority have been enumerated in Section 5. Power has been given to suspend exhibition of films in certain cases to the State Government or the District Magistrate u/s 6.

23. Sections 6A, 7, 8, 8A and 9 of the said Act are the provisions dealing with the regulation of exhibition of cinemas and video by making provision of inspection giving power to suspend, revoke and cancel a license, imposition of penalty, compounding of offences etc.. Power to grant exemption has been conferred on the State Government.

24. Section 11 deals with the direction of action taken under the Act and Section 12 is the repelling section. While Section 13 empowers the Stale Government so make rules.

25. On scanning of various provisions of the said Act it would show that the U.P. Cinemas Regulation Act. 1955 is concerned with the grant of license and regulation of exhibition of cinemas and videos. In our considered opinion, the exclusion of video from the definition of ''cinematograph'' is only for a limited purpose i.e. so far as it relates to the grant of license is concerned. As usual, it is provided in the opening part of the Section 2 that in the Act unless there is anything repugnant in the subject of context the definitions contained therein will have meaning as defined in the definition clause. The State Legislature considered to create a separate clause for exhibition by means of video for the purposes of the U.P. Cinemas (Regulation) Act, 1955, for the limited purpose to regulate them by granting different kinds of licenses.

26. By means of abundant precaution the words ''and video'' have been added in the aims and object of the U.P. Cinemas (Regulation) Act, 1955. The above inference finds support from the definition of video cinema as contained in Clause (s) of Section 2 of the U.P. Entertainment and Betting Tax Act, 1979. It refers back to the license granted under the said Act, 1955.

27. The Supreme Court in the case of M/s. Laxmi Video Theaters and Others Vs. State of Haryana and Others, having held so that cinematograph includes video cassette recorder and video cassette player, there is little scope to say that within the meaning of Section 3-B of the U.P. Entertainment and Betting Tax Act, 1979. exhibition by means of videos is not included in the meaning of a cinema. In the absence of any definition of cinema in the Act, 1979. the word ''cinema'' as understood in common parlance should be understood. It is not out of place to mention here that the petitioner who is running video cinema is paying entertainment tax under the provisions of the U.P. Entertainment and Betting Tax Act. 1979. though the mode of realization of entertainment tax is somewhat different than in the case of an ordinary cinema. But it will not make any difference.

28. The upshot of the above discussion is that "cinema" is wide and 9 comprehensive term inclusive of ''video''. In other words, ''cinema'' is genus and ''video'' is species. The definition of cinematograph excluding video as contained in the U.P. Cinemas (Regulation) Act, 1955 cannot be imported in the U.P. Entertainment and Betting Act, 1979.

29. In view of the above discussion, we do not find any merit in the writ

petitions. No other point was pressed. Both the writ petitions are dismissed accordingly. But no order as to costs.

