(1995) 10 AHC CK 0010

In the Allahabad High Court

Case No : C.M.W.P. No. 937 of 1995

Jai Prasad Singh — APPELLANT

Vs

State of U.P. and Another — RESPONDENT

Date of Decision : 27-10-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Cinematograph Rules, 1951 — Rule 3

Citation : (1996) 2 AWC 848

Hon'ble Judges : V.N. Khare, J;R.R.K. Trivedi, J

Bench : Division Bench

Advocate : Govind Krishna, for the Appellant;

Final Decision : Dismissed

Judgement

V.N. Khare, J.—In this petition under Article 226 of the Constitution of India, the Petitioner by invoking principle of promissory estoppel asks this Court to quash the order dated 6.5.1995, whereby he has been granted licence with the condition that he will be given grant-in-aid in the shape of exemption from levy of entertainment tax to the extent of 75% .

2. The Petitioner''s further prayer is that the Respondent be commanded to grant 100% exemption from levy of entertainment tax for a period of three years as envisaged in the earlier Government order dated 18th July, 1989.

3. The State Government by an order dated 18th July, 1989, in order to give encouragement for construction of building for exhibiting cinematograph films therein, declared that whosoever constructs cinema building for the purpose of exhibiting cinematograph films will be accorded 100% entertainment tax exemption for a period of first two years and 75% in the third year in the shape of grant-in-aid. This Government order was modified by another Government order dated 14.5.1992, whereby paragraph 2 of the Government order was substituted by new paragraph. The new substituted paragraph provided that the

cinema premises envisaged under the Government order dated 18.7.1989 shall be accorded tax exemption at the rate of 75% for the period of first three years in the shape of grant-in-aid. The Petitioner alleges that he has submitted an application on 6th August, 1992 and subsequently on 3rd November, 1992 under Rule 3 of U.P. Cinematograph Rules, 1951 for granting approval for construction of cinema building. On 19th July, 1993, the Licensing Authority accorded approval to the Petitioner for constructing cinema building. It is alleged that in pursuance thereto, the Petitioner constructed cinema building for carrying on business of exhibiting cinematograph films. On 9th April, 1995, the Petitioner was granted licence for exhibiting cinematograph films in the premises newly constructed by the Petitioner. Immediately, thereafter, the Petitioner has come up to this Court by the instant petition.

4. Learned counsel for the Petitioner urged that in view of the decision taken by the State Government that the newly constructed cinema license shall be accorded 100% tax exemption for a period of two years and 75% in the third years, the State Government is estopped from resiling from that decision and the Petitioner cannot be compelled to pay extra 25% tax in the first two years on his business of exhibiting films. Learned counsel relied upon two decisions of the Supreme Court in the case of Assistant Commissioner of Commercial Taxes (Asst.) Dharwar and Others Vs. Dharmendra Trading Company and Others, and in the case of Vij Resins Pvt. Ltd. and Others Vs. State of Jammu and Kashmir, and an un-reported decision of this Court in the case of Sri Chandra Verma v. State of U.P. and Ors. in Civil Misc. Writ Petition No. 25093 of 1993 decided by a Division Bench of this Court on 28.7.1995. The principle of promissory estoppel is well-settled. It is very well-settled that it is available to a person when two conditions are satisfied. One of the conditions is that there must be a deviation from an assurance by the Government or any general violation of the same on behalf of State Government. The second condition is that the person against whom such deviation is made, acts upon that assurance and thereby alters his position to his detriment, and such an assurance is subsequently resiled or withdrawn, the Courts have held that such a withdrawal is not permissible. What we find here is that the Petitioner submitted his applications on 6th August, 1992 and 3rd November. 1992 and by that time, the Government order dated 18.7.89 had already stood modified by the Government order dated 14.5.1992. Under amended order, the Petitioner was not entitled to 100% tax holiday in the shape of grant-in-aid, but entitled to 75% exemption from tax for a period of three years. Under such circumstances, we are of the view that the Petitioner is not entitled to invoke the principle of promissory estoppel and he cannot insist upon the Respondents to grant that exemption for a period of first two years on his business. The two Supreme Court decisions cited above are totally distinguishable and are not applicable to the facts of the present case. In the case of Assistant Commissioner of Commercial Taxes (Asst.) Dharwar and Ors. v. Dharmendra Trading Co. etc., (supra), the facts were that an enterpreneur has already set up a unit and commenced his business and in that connection, it was

held that entrepreneur cannot be compelled to pay tax. Similar situation was in the case of M/s. Vij Resins Pvt. Ltd. and Anr. v. State of Jammu & Kashmir and Ors. (supra). So far as the unreported decision of this Court in the case of Sri Chandra Verma v. State of U.P. and Ors. (supra) is concerned, in that case also building plan was approved by the competent authority under Rule 3 of the Rules before the Government order dated 18th July, 1989 was modified on 14.5.1992. Thus none of the decisions cited by learned counsel for the Petitioner supports the proposition of law advanced by him.

5. Learned counsel for the Petitioner then urged that if such a view is taken, there would be two classes of licensees, in the terms of Government order dated 18th July, 1989. This argument is totally misconceived. The persons who submitted applications for approval to construct cinema building and obtained approval prior to the modification of the Government order dated 18.7.1989 cannot be equated with those persons who applied for construction of cinema building after the modification of Government order dated 13.7.1989. In view of this, we find no merit in the petition, It is, accordingly, dismissed.

