

(1995) 02 RAJ CK 0039
In the Rajasthan High Court
Case No : Civil Writ Petition No. 6684/92

Kailash Talkies

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 06-02-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 114
Rajasthan Entertainments and Advertisements Tax Act, 1957 — Section 18
Rajasthan Entertainments and Advertisements Tax Rules, 1957 — Rule 27(8), 27(9),
29, 29(3)

Citation : AIR 1996 Raj 30 : (1995) 1 RLW 207 : (1996) 1 WLC 231

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Advocate : Vineet Kothari, for the Appellant; A.K. Rajvanshi, for the Respondent

Final Decision : Dismissed

Judgement

R.R. Yadav, J.—The instant writ petition has been filed by the petitioner for quashing the impugned assessment orders dated 7-9-89 Annx. 1 to 5 for the month of April, 1988 to August, 1988 along with order dated 1-8-1992 Annexure 8 to the writ petition passed by the Addl. Commissioner, Commercial Taxes, Rajasthan, Jaipur (respondent No. 1) in exercise of his revisional powers under Rule 29 of the Rules framed under Rajasthan Entertainment (And Advertisements) Tax Act, 1957 (hereinafter referred to as "the Rajasthan Act No. 24 of 1957).

2. Brief facts which are necessary for disposal of the instant writ petition lies in a narrow compass. The Commercial Taxes Officer, Shri Samrath Lal Panwar made inspection on 30-8-1988 at 7.45p.m. of the petitioner's Picture Hall known as Kailash Talkies, Kapasan Dist. Chittorgarh in the presence of Shri Jagdish Prasad Borgama, brother of one of the partners and found that at that time, the picture "Parwana" was exhibited. The Inspecting Officer also found that the ticket issued to the spectators were not issued from the authenticated ticket books by the

Entertainment Department. It is alleged that the tickets were issued to various persons from the ticket books bearing serial number, which were different from the ticket books authenticated by the department.

3. A show cause notice was issued to the petitioner by the Assessing Authority. In reply to show cause notice, the petitioner submitted his explanation stating therein that the ticket books used on 30-8-1988 were from the ticket books used up to 31-12-1987 duly authenticated and were being used on that day because the current ticket books were lying in a locked cupboard and the keys were with the partner, who was out of station and also as new rates were not yet fixed and new ticket books bearing new rates were not got printed by that time. It is also alleged in the explanation submitted by the petitioner that a remark to this effect was duly noted by the Booking Clerk on the said series being used on that day.

4. The aforesaid explanation submitted by the petitioner was not accepted by the Assessing Authority, therefore, he framed best judgment assessment for five months from April, 1988 to August, 1988 and created demand of entertainment tax, interest and penalty thereon by separate assessment orders for all these five months vide Annexures 1 to 5 to the writ petition.

5. Aggrieved against the aforesaid order of assessment, interest and penalty imposed by the Assessing Authority, the petitioner preferred an appeal before the Deputy Commissioner (Appeals), Commercial Taxes Department, Udaipur, which was partly allowed holding that there was no evasion of tax. The Appellate Authority set aside the levy of tax and imposition of penalty, however, the levy of interest was maintained. On the delayed payment of tax, further penalty u/s 10(3)(b)(iii) for not getting the forms authenticated, was maintained.

6. Aggrieved against the order of the Appellate Authority dated 1-12-1989 Annexure 6 to the writ petition, the Commercial Taxes Officer, Chittorgarh (respondent No. 2) filed a revision petition under Rule 29 of the Rules framed under Act No. 24 of 1957. The Revisional Authority recorded a categorical finding to the effect that the order of the Appellate Authority Annexure 6 to the writ petition was erroneous and not justified. The Revisional Authority has given cogent and convincing reasons as to how the finding arrived at by the Appellate Authority is erroneous and unjust. As a matter of fact, in my opinion, according to the finding recorded by the Revisional Authority (respondent No. 1), it is easily deducible that the finding recorded by the Appellate Authority in the present case to the effect that the petitioner-firm is not guilty of tax evasion is perverse and no reasonable man can arrive on such finding. After taking into account the rival contentions raised before the Revisional Authority, he arrived at a finding that the authentication of ticket books is with the object of prevention of tax evasion. If non-use of authenticated tickets leniently viewed, the object of prevention of tax evasion, would be frustrated. According to respondent No. 1, there are structural safeguard in the Act and Rules to check the tax evasion, which is required to be faithfully adhered to by the petitioner-Kailash Talkies. If unauthenticated "tickets are permitted to be used by the proprietor of the

Cinema Hall, there would be no safe-guard to check the tax evasion in such a situation.

7. After service of notices upon the respondents, they filed a detailed return to the writ petition denying the allegations made in the writ petition. It is clearly stated in the reply that the Assessing Authority has passed the assessment orders Annexures-1 to 5 after giving full opportunity of being heard to the petitioner. The petitioner has submitted his explanation, which was found to be unsatisfactory. It is also stated in the reply that the conclusion arrived at by the Appellate Authority in setting aside the order passed by respondent No. 2 and partly allowing the appeal, was perverse, therefore, aggrieved against the order of the Appellate Authority Annexure 6 to the writ petition, respondent No. 2 has preferred a revision petition under Rule 29 of the Rules framed under the Act No. 24 of 1957, which has rightly been allowed after analytical discussion of the material available on record. According to the averments made in the reply, it is stated that the order Annexure 8 to the writ petition passed by respondent No. 1 is eminently just and proper and does not require interference of this Court under Article 226 of the Constitution of India.

8. I have heard Mr. Vineet Kothari, learned counsel for the petitioner and Mr. A. K. Rajvanshi, learned counsel for the respondents at length and have critically gone through the material available on record.

9. The main thrust of the arguments of the learned counsel for the petitioner Mr. Vineet Kothari, are that the scope of revision is limited under Rule 29 of the Rajasthan Entertainments and Advertisements Tax Rules, 1957 (hereinafter referred to as "the Rules of 1957") where the Revisional Authority (respondent No. 1) has been empowered to pass such order as he thinks fit. According to the learned counsel for the petitioner, the words used under Rule 29 aforesaid, "such order as he thinks fit", have been used by the rule making authority with circumspection, which cannot be given such an extended meaning to set aside the order passed by the Appellate Authority in exercise of his appellate powers given under Rule 27 of the aforesaid Rules. In support of his contention, learned counsel for the petitioner has placed reliance on a decision rendered by a learned single Judge of this Court in S. B. Civil Writ Petition No. 309 of 1985-Haridit Singh v. State of Rajasthan, decided on 24-11-1994.

10. Second argument of the learned counsel for the petitioner before me, is that only provisions of Sub-rule (2) to (6) of Rule 27 of the Rules framed under the Act No. 24 of 1957 mutatis mutandis, are made applicable for every application in exercise of revisional jurisdiction but sub-rule (8) of Rule 27 is not made applicable, so, the revisional count has no jurisdiction to confirm, reduce, enhance or annul the assessment or penalty in exercise of his revisional powers under Rule 29 of the aforesaid Rules and as such, he is not empowered to set aside the order passed by the Appellate Authority, as has been passed in the present case.

11. Thirdly, it is submitted by the learned counsel for the petitioner that the revisional court has no jurisdiction to enhance the assessment tax and penalty assessed by the Assessing Authority, which was legally and rightly reduced by the Appellate Authority in exercise of his appellate powers under Rule 27 of the aforesaid Rules without issuing show cause notice of enhancement of tax to the petitioner.

12. Lastly, on merit, the learned counsel for the petitioner has submitted that the best judgment assessment orders Annexures 1 to 5 passed by the Assessing Authority in the present case are rather worse judgment assessment.

13. Mr. A. K. Rajvanshi, learned counsel for the respondents refuted the aforesaid arguments advanced on behalf of the petitioner and submitted that the impugned order Annexure 8 passed by respondent No. 1 is eminently just and proper and it does not require any interference of this Court in exercise of equitable and extraordinary jurisdiction under Article 226 of the Constitution of India.

14. I have given my thoughtful consideration to the rival contentions advanced at the Bar and I propose to deal with the arguments advanced by the learned counsel for the petitioner in seriatim.

15. The first argument of the learned counsel for the petitioner requires interpretation of Rule 29 framed under Act No. 24 of 1957 about the scope of revision. In order to discuss the jurisdictional point raised by the learned counsel for the petitioner, it would be expedient to quote Rule 29 of the said Rules as under:--

"29. Revision : The Commissioner may of his own motion, or, on application made to him within one hundred and twenty days of the order, call for the record of any proceedings (not being proceeding under Sub-section (3) or (3A) of Section 10 or Section 11), which are pending before or have been disposed of by any other authority subordinate to him under the Act for the purpose of satisfying himself as the legality or propriety of such proceedings or of any order made therein and may pass such orders in relation thereto as he may think fit;

Provided that no revision under this Rule shall be entertained upon the application of a proprietor -

(a) if he could have appealed under Rule 27 and no appeal has been filed by him, or

(b) if an appeal is pending before the appellate authority.

(2) No order shall be made under this Rule without giving the proprietor or any other person interested a reasonable opportunity of being heard.

(3) The provisions of Sub-rules (2) to (6) of Rule 27 shall apply mutatis mutandis to every application for revision."

16. A close scrutiny of Rule 29 of the aforesaid Rules leads towards an irresistible conclusion that the revisional authority on his own motion or on application made to him within 120 days of the order, call for record of any proceedings, which are pending before or have been disposed of by any other authority subordinate to him under the Act for the purpose of satisfying himself as the legality or propriety of such proceedings or of any order made therein and may pass such orders in relation thereto as he thinks fit. In my humble opinion, the words used under Rule 29 afore-said, are wide enough where the revisional court while satisfying itself about the legality or propriety of such proceedings or of any order made therein, may enter into the question of law involved and can also enter into the factual controversy between the parties. The word "propriety" of such proceedings or any order made therein, empowers the revisional court to enter into the factual controversy between the parties being the last court of fact. I am fortified in taking the aforesaid view as contemplated "under Sub-rule (9) of Rule 29, where it is clearly mentioned that every order passed in appeal under this Rule shall, subject to the powers of revision conferred under Rule 29, be final.

17. In my humble opinion, after analytical discussion of legal and factual controversy involved before the revisional court in exercise of his revisional powers under Rule 29, it can confirm, reduce, enhance or annul the assessment or penalty and as such, has also ample power to set aside the order passed by the Appellate Authority, if the revisional court is of the opinion that the finding of fact arrived at by the Appellate Authority is either perverse or erroneous or based on no evidence on record.

18. As a result of the aforesaid discussion, the first argument advanced by the learned counsel for the petitioner is not acceptable.

19. In support of his first argument, learned counsel for the petitioner has placed reliance on an unreported decision of Haridit Singh's case (supra). The facts of that case are not applicable in the present case. A bare perusal of paragraph 11 of the said judgment, throws a flood of light that in that case, the learned single Judge found as a matter of fact that the reasons assigned by the Appellate Authority in that case were not perverse which call for interference by the revisional authority in its revisional jurisdiction. But in the present case, on close scrutiny of the order Annx. 8 passed by the Revisional Authority, it reveals that the order of the Appellate Authority, was erroneous and unjustified with which I am in full agreement. In my humble opinion, in the impugned order passed by the revisional authority Annexure 8 to the writ petition, the respondent No. 1 has recorded a categorical finding that the order passed by the appellate authority to the effect that the petitioner-firm is not guilty of tax evasion, is erroneous and unjustified. The revisional court has given cogent and convincing reasons to arrive at the aforesaid conclusion after analytical discussion of the material on record. I am fully convinced that the revisional court has given compelling reasons to arrive at a conclusion that the finding recorded by the appellate

authority in the present case, is erroneous. In view of the aforesaid facts and circumstances, the ratio of decision rendered by the learned single Judge in the case of Haridit Singh (supra) is not applicable in the present case.

20. The second limb of argument of the learned counsel for the petitioner about the interpretation of Rule 29 of the said Rules is that since under Sub-rule (3) of Rule 29, the provisions of Sub-rules (2) to (6) of Rule 27 have been made applicable mutatis mutandis for every application for revision and advisedly the rule making authority has refrained to include Sub-rule (8) of Rule 27, therefore, the revisional authority has no jurisdiction to confirm, reduce, enhance or annul the assessment or penalty and has also no jurisdiction to set aside the order passed by the Appellate Authority Annexure 6 to the writ petition in exercise of his appellate jurisdiction. The aforesaid argument is fallacious, hence, not tenable. To my mind the words used by the rule making authority to the effect "as he thinks fit" are wide enough, which does not require inclusion of Sub-rule (8) of Rule 27 of the aforesaid Rules for exercise of revisional jurisdiction to vary to differ or to cancel any proceedings or order passed by any subordinate authority to him after satisfying himself about the legality and propriety of such proceedings or of any order made therein being last court of fact as contemplated under Sub-rule (9) of Rule 27 of the said Rules.

21. It must be taken to be settled law that if interpretation of a particular Act or Rule are interpreted in such a manner, in which case, one may lead to a harmonious interpretation making of Act or Rule workable and any interpretation which is leading to absurdity, then court of law will prefer the first interpretation which make all the provisions of an Act or Rule workable instead of leading towards absurdity.

22. As a result of the aforesaid discussion, I am of the opinion that it was not at all necessary to include Sub-rule (8) of Rule 27 under Sub-rule (3) of Rule 29 of the said Rules while including in the aforesaid rule, the provisions of sub-rules (2) to (6) of Rule 27.

23. It is urged before me that once in exercise of appellate powers under Rule 27, the Dy. Commissioner (Appeals), Udaipur reduced the assessment and penalty imposed upon the petitioner then before enhancing the assessment and penalty, the revisional court was under legal obligation to issue notice for enhancement of tax to the petitioner. According to the argument of the learned counsel for the petitioner, his client cannot be taken by surprise. It is true that the revisional court cannot enhance the assessment tax and penalty in exercise of his revisional jurisdiction all of sudden without giving an opportunity of being heard to the petitioner about such enhancement but notice of enhancement will be required only in those cases, where the revisional court in exercise of its powers under Rule 29 framed under Act No. 24 of 1957 has enhanced the assessment tax and penalty under Act No. 24 of 1957 exceeding the amount of tax and penalty assessed by the Assessing Authority as well as the Appellate Authority. But in such cases, where the revisional court has not enhanced the

assessment tax and penalty more than assessed by the Assessing Authority, then, merely because the Appellate Authority has reduced the assessment tax and penalty, no such show cause notice for enhancement would be required to be given to the petitioner. In the present case, the revisional court has not enhanced the assessment tax and penalty more than assessed by the Assessing Authority (respondent No. 2). The revisional court has simply set aside the order passed by the Appellate Authority. As a matter of fact, in the present case, the revisional Court has restored the orders of assessment Annex. 1 to 5 passed by the Assessing Authority, therefore, in such a situation, it cannot be said that the revisional Court has enhanced the assessment tax and penalty by surprise to the petitioner against the principles of natural justice and fair play without giving a show cause notice of enhancement. The petitioner has already been given an opportunity of being heard before the Assessing Authority.

24. The last submission of the learned counsel for the petitioner before me is to the effect that the best judgment assessment passed by the Assessing Authority in the present case is rather worse judgment assessment. In support of the aforesaid argument, learned counsel invited my attention towards the factual controversy involved between the parties. Suffice it to say, that this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India cannot afford to enter into the factual controversy involved between the parties. As a matter of fact, the factual controversy cannot be gone into under Article 226 of the Constitution of India, therefore, I am unable to enter into the factual controversy involved between the parties.

25. The revisional Court has recorded a categorical finding of fact on the basis of the material available on record that the petitioner was issuing tickets from two series with the object of evading tax. The explanation that the different series was used because the rate were not fixed and new tickets were not got printed, is found by the revisional Court neither logical nor worth credence. In the appellate order itself, it is admitted by the appellate authority that the ticket books, which were used up to 29-8-88 were got authenticated. The Appellate Authority has failed to consider that those ticket books, which were got authenticated, were not exhausted and still tickets in those ticket-books were left, which could meet the immediate requirement of the petitioner. In my considered opinion, the basis given by the Appellate Authority that on the day of survey, no additional person was found, is not a proper explanation. As a matter of fact, the authentication with the object of prevention of tax evasion if non-use of authenticated tickets is leniently viewed, the object of prevention of "tax evasion would be frustrated. The petitioner has also deliberately avoided to produce authenticated records which were authenticated by the Assessing Authority either before the Assessing Authority at the time of assessment or before the revisional Court. Number of notices had been issued to the petitioner by the Assessing Authority but he always preferred to remain absent except on one or two occasions. The revisional Court has not committed any manifest error of law in drawing adverse inference against non-production of material

documents in support of his explanation which were in the custody of the petitioner.

26. It is argued before me by the learned counsel for the petitioner that no notice u/s 5-B(2) of the Act of 1957 was given to the petitioner, therefore, the defect is fatal and goes to the root of the matter. Suffice it to say, that the petitioner has not taken any such objection that as the notice was under wrong Section, therefore, records were not produced before the Assessing Authority. Be that as it may, I have critically gone through the impugned order Annx. 8 to the writ petition in my considered opinion, the impugned order passed by the revisional authority is eminently just and proper and does not require interference of this Court under equitable and extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

27. Since there is no error apparent on the face of record in the impugned order Annx. 8 to the writ petition, therefore, the present writ petition is liable to be dismissed on this ground alone. I am fully satisfied that respondent No. 1 has not committed any manifest error of law in passing the impugned order Annx. 8 to the writ petition.

As a result of the aforesaid discussion, the instant writ petition lacks merit and it is hereby dismissed. The parties are directed to bear their own costs.