(2010) 01 AHC CK 0093

In the Allahabad High Court

Kamal Ji APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 21-01-2010

Acts Referred:

Uttar Pradesh Cinemas (Regulation) Act, 1955 — Section 2
Uttar Pradesh Cinemas (Regulation) Act, 1955 — Section 2
Uttar Pradesh Cinemas (Regulation) Act, 1955 — Section 2

Citation : (2010) 3 AWC 2524

Hon'ble Judges : Subhash Chandra Nigam, J;Rajes Kumar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Rajes Kumar, J.—Heard Sri Ram Yash Pandey, learned Counsel for the petitioners, Sri A. C. Tripathi, learned Counsel for the respondents.

2. In the present case, the petitioners are seeking the following reliefs:

(i) Issue a writ, order or direction in the nature of certiorari quashing the order dated 23.9.2009, passed by the respondent No. 2;

(ii) Issue a writ, order or direction in the nature of certiorari quashing the order dated 23.9.2009 to the extent Rs. 3,000 as weekly advance entertainment tax has been ordered to be paid;

(iii) Issue a writ, order or direction in the nature of mandamus commanding the respondents No. 2 and 3 not to compel to the petitioners to pay weekly advance entertainment tax of Rs. 3,000 and the respondents No. 2 and 3 may be directed to accept a sum of Rs. 1,500 as weekly advance entertainment tax and the respondents No. 2 and 3 may be further directed not to interfere in the running of the temporary video cinema halls of the petitioners situate in quasba Chopan and Dala, district Sonbhadra;

(iv) Issue a writ, order or direction in the nature of mandamus commanding the respondents No. 2 and 3 to adjust the weekly advance entertainment tax being deposited by the petitioners of Rs. 3,000 as weekly advance entertainment tax, while demanding the weekly advance entertainment tax of Rs. 1,500 or to refund the excess tax paid by the petitioners with interest at 18% per annum from the date it was paid till its realization;

(v) Issue any other and further writ, order or direction, as this Hon''ble* Court may deem fit and proper; and

(vi) Award passed op the writ petition of the petitioner.

3. The brief facts of the case are that the petitioner is running a travelling video cinema in the name of Puja Video Hall and Deepak Video Hall. The travelling video cinema is defined u/s 2(h) of U.P. Cinema (Regulation of Exhibition by means of Video) Rules, 1988 means a video cinema which gives exhibition by means of video in a temporary building. The petitioner has been granted licence on 14.2.2009 for the period 17.2.2009 to 16.8.2009 for the period of six months. Thereafter, the licence was further extended on 18.8.2009 for the period of 17.8.2009 to 16.2.2010 for the period of six months.

4. The claim of the petitioner is that in view of the Notification No. l672/11-Ka, N1.-6-2009-M (92)/2009 dated 4.9.2009, the petitioner is liable to pay entertainment tax @ Rs. 1,500 per week which is applicable to video cinema in a temporary building situated in a local area having no cinema in a permanent building provided in Clause (vi) of serial No. 9 of the Schedule. However, the respondent is demanding Rs. 3,000 per week towards entertainment tax under Clause (i) of serial No. 9 of the Schedule which is applicable to a case where the video cinema is running in a permanent building situated in a local area having no permanent cinema.

5. Learned standing counsel submitted that under Rule 15 (2) of Rules, 1988, a licence to a travelling video cinema for a particular place shall initially be granted for a period not exceeding six months, which may be extended for a further period not exceeding six months. According to him, the licence of travelling video cinema cannot be extended beyond one year. He further submitted that Section 4A of the U.P. Entertainments and Betting Tax Act, 1979 has been amended by the U.P. Ordinance, 2009 and as per amended Section 4A (3) where the licence of a travelling video cinema in a local area is extended or renewed or new licence is granted after the expiry of a period of one year from the date of start of the travelling video cinema under the Uttar Pradesh Cinema (Regulation of Exhibition by means of Video) Rules, 1981 there shall be levied and paid an entertainment tax due for corresponding class of video cinema in permanent building. Since the petitioners'' licence has been extended after the expiry of six months, the petitioner is liable to pay entertainment tax applicable to a class of video cinema running in a permanent building, i.e., @ Rs. 3,000 per week. It is further submitted that the period of one year mentioned in Sub-section (3) qualifies to the new licence only and not to the extension or renewal.

6. Learned Counsel for the petitioner submitted that there is no bar under Rule 15 (2) of the Rules, 1988 that the travelling video cinema licence cannot be extended beyond one year. He further submitted that Rule 15 (2) only provides that initially licence shall be granted for six months and further extension will not exceed six months. It means that the extension at the stretch cannot be for the period of more than six months but after the expiry of six months, the licence can further be extended or renewed or it may be open to the Authority to issue a fresh licence. It is further submitted that under Sub-section (3) of Section 4A, the period of one year qualifies the extension, renewal and new licence and therefore only after expiry of one year from the date of start of the travelling video cinema after the extension, renewal or a fresh licence, there shall be levied of entertainment tax on a travelling video cinema treating it as travelling video cinema running in a permanent building under Clause (1) of serial No. 9 of the Schedule of the Notification dated 4.9.2009.

7. Having heard learned Counsel for the parties, we have perused the relevant documents on record. It will be useful to refer the relevant provisions of Act and Rules.

8. Rule 2 (h) and Rule 15 of U.P. Cinema (Regulation of Exhibition by means of Video) Rules, 1988 reads as follows:

Rule 2 (h) "Travelling Video Cinema" means a video cinema which gives exhibition by means of video in a temporary building.

Rule 15. Validity of licence.- (1) Except in the case of travelling video cinema a licence for exhibition by means of video may be granted or renewed by the licensing authority for a period not exceeding three years at a time.

(2) A licence to a travelling video cinema for a particular place shall initially be granted for a period not exceeding six months which may be extended for a further period not exceeding six months.

Section 4A as amended by the Uttar Pradesh Entertainments and Betting Tax (Amendment) Ordinance, 2009 (U.P. Ordinance No. 4 of 2009) dated 16.6.2009 read as follows:

4A. (1) The proprietor of a video cinema shall be liable to pay Tax on Video Cinema entertainment tax at such rate as the State Government may, from time to time, notify in this behalf and different rates may be notified for different categories of video cinema or for different area or for different ticket rates.

(2) The State Government may by notification, classify video cinemas for the purposes of this Act with regard to the population of the local areas where they situate the number of permanent cinemas existing therein and may notify different rates of entertainment tax for different classes of video cinemas.

(3) Where the licence of a travelling video cinema in a local area is extended or renewed or new licence is granted after the expiry of a period of one year from

the date of start of the travelling video cinema under the Uttar Pradesh Cinema (Regulation of Exhibition by means of Video) Rules, 1981 there shall be levied and paid an entertainment tax due for corresponding class of video cinema in permanent building."

Serial No. 9 of the Schedule of Notification No. 1672/11-Ka.Ni.-6-2009-M.(92)/2009 dated 4.9.2009 reads as follows:

(A) Exhibitions by means of Video in a Video cinema:

(i) in a permanent building situated in a local area having no permanent cinema:

(ii) ....

(iii) ....

(iv) ....

(v) ....

(vi) in a temporary building situated in a local area having no cinema in a permanent building.

9. There is no dispute that the petitioner is running a travelling video cinema. Therefore, in view of Section 2(h) of U.P. Cinema (Regulation of Exhibition by means of Video) Rules, 1988 which defines the travelling video cinema falls under the category of running travelling video cinema in a temporary building, therefore, under Clause (i) of serial No. 9 of the Schedule of the Notification dated 4.9.2009, the petitioner is liable to pay the entertainment tax @ Rs. 1,500 per week. The petitioner was granted licence on 14.2.2009 for the period 17.2.2009 to 16.8.2009 for the period of six months and thereafter the said licence was further extended on 18.8.2009 for the period 17.8.2009 to 16.2.2010 for another period of six months. The period of one year has not yet been expired. We have perused Rule 15 (2) of the Rules, 1988. Rule 15 (2) provides that a licence to a travelling video cinema for a particular place shall initially be granted for a period not exceeding six months which may be extended for a further period not exceeding six months. There is nothing in the rule which prohibits further extension after expiry of six months. It only prohibits extension not exceeding six months, it means extension cannot be for more than six months at stretch. Therefore, we are of the view that the licence can further be extended or renewed even after the expiry of the one year. We have also considered Section 4A (3) of the Act. We are of the view that the period of one year qualifies the extension, renewal and new licence and therefore, only after expiry of one year from the date of start of a travelling video cinema under Rules, 1988, the travelling video cinema shall be levied entertainment tax under the Class video cinema running in a permanent building, i.e., under Clause (i) of serial No. 9 of the Schedule of the Notification dated 4.9.2009. Since the period of one year has not been expired, we are of the view that the petitioner is liable to pay entertainment tax only under the Clause (vi) of serial No. 9 of the

Schedule of the Notification dated 4.9.2009 and not under the Clause (i) of serial No. 9 of the Schedule of the Notification dated 4.9.2009. Therefore, the demand is wholly unjustified.

10. In the result, the writ petition is allowed. The orders dated 23.9.2009, passed by the District Magistrate, Sonbhadra Annexures-8 and 9 to the writ petition are set aside. The respondents are restrained to charge the entertainment tax @ Rs. 3,000 per week up to the period 16.2.2010. In case if any excess amount has been paid by the petitioners, the same may be refunded or adjusted in accordance with law.