
(2000) 10 AHC CK 0075
In the Allahabad High Court
Case No : C.M.W.P. No. 35560 of 1993

Kamla Palace

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 12-10-2000

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 227
Uttar Pradesh Cinematograph Rules, 1951 — Rule 3, 3(3)

Citation : (2000) 4 AWC 3127

Hon'ble Judges : S.R. Alam, J; R.K. Agrawal, J

Bench : Division Bench

Advocate : V.B. Singh and M.M. Goswami, for the Appellant; C.S. Singh, Chandra Sekhar Singh and S.C., for the Respondent

Final Decision : Disposed Of

Judgement

R. K. Agrawal, J.—The petitioner, Kamla Palace, village Dunda Hera, district Ghazlabad. through its proprietor Sri Arvind Mohan Sharma, has filed the present petition under Article 226/227 of the Constitution of India, seeking writ of certiorari quashing the orders dated 14.5.1992, 16.7.1993, 2.7.1993, 13.9.1993 and 22.9.1993, contained in Annexures-14, 9, 12, 13 respectively, in addition to writ of mandamus directing the respondents not to compel the petitioner to pay any amount towards the entertainment tax for the first two years of functioning of petitioner-cinema hall.

2. The facts of the case in brief are that according to the petitioner, acting on the basis of grant-in-aid facility provided by the State Government vide Government Order dated July 18, 1989, he decided to construct a cinema hall in village Dunda Hera of district Ghaziabad, which had a population of less than 5.000. The petitioner had made an application under Rule 3 of the U. P. Cinematograph Rules, 1951 (hereinafter referred to as the Rules), on 18.11.1989. seeking approval of the site plan and permission for construction of permanent cinema hall building. The District Magistrate, who is the licensing authority, granted

permission under Rule 3 (3) of the Rules, to the petitioner on 20.2.1992. Thereafter, the petitioner started the construction of the cinema hall. The petitioner had applied for grant of licence on 20.2.1993. The petitioner was granted licence on 9.5.1993 and it started exhibiting the cinematograph films from 10.5.1993.

3. It may be mentioned here that the State Government had provided certain incentives for construction of new cinema halls vide order dated 18.7.1989. The said order applied to those cases where the application for approval of the site plan for construction of permanent cinema building had been filed after 1.4.1989 but before 31.3.1994 coupled with the conditions that application for grant of licence should be made between 1.4.1990 to 31.3.1995. The grant-in-aid admissible to such new cinema halls was 100% of the entertainment tax during first 2 years and 75% of the entertainment tax during the third year. The petitioner also applied for giving of grant-in-aid in terms of Government Order dated 18.7.1989. However, vide order dated 16.7.1993 passed by the District Magistrate, Ghaziabad, respondent No. 4, the petitioner was informed that it would be entitled to grant-in-aid to the extent of 75% of the entertainment tax only as the cinema hall was running with effect from 10.5.1993. The petitioner also received an order dated 22.7.1993 passed by the incharge. Assistant Commissioner. Entertainment Tax, Ghaziabad, respondent No. 3 calling upon it to deposit a sum of Rs. 42,603.77 being 25% amount of entertainment tax recoverable from the petitioner from 10.5.1993 to 14.7.1993. The petitioner made a representation before the Secretary (Institutional Finance) Government of U. P., Lucknow. on 4.8.1993 stating, Inter alia, that it had constructed the cinema hall on the basis of grant-in-aid as provided in Government Order dated 18.7.1989 which was effective from 1.4.1989. The petitioner further stated that since it had complied with all the conditions of the Government Order dated 18.7.1989. it was entitled for grant-in-aid to the extent of 100% entertainment tax for the first 2 years. The petitioner prayed for quashing the order dated 16.7.1993 and issuance of direction for not depositing any money towards any entertainment tax. The Joint Secretary (Institutional Finance) respondent No. 2. vide order dated 13.9.1993 informed the petitioner that the Government Order dated 18.7.1989 had been amended vide order dated 14.5.1992 and. therefore, the order dated 16.7.1993 passed by the respondent No. 3 was valid and legal. After the Joint Secretary (Institutional Finance) respondent No. 2, had communicated the decision upholding the legality of the order dated 18.7.1993, the respondent No. 4 had passed another order on 22.9.1993. directing the petitioner to deposit a sum of Rs. 71,563.53 being 25% of the entertainment tax for the period 10.5.1993 to 7.9.1993. The orders dated 14.5.1992. 16.7.1993. 22.7.1993, 13.9.1993, 22.9.1993 are under challenge in the present petition.

4. We have heard Shri V. B. Singh, learned counsel for the petitioner and Shri Chandra Sekhar Singh. learned standing counsel for the respondents.

5. The learned counsel for the petitioner submitted that the Government Order

dated 14.7.1992. wherein grant-in-aid for first two years had been amended from 100% to 75% of the entertainment tax would not be applicable in the case of the petitioner inasmuch as acting on the basis of the terms/incentives as contained in the Government Order dated 18.7.1989, the petitioner had taken steps to construct a new permanent cinema hall for which necessary permission was also granted by the respondent No. 4 vide order dated 20.2.1992. The petitioner having altered his position by acting on the promise as held out by the State Government and contained in the Government Order dated 18.7.1989, cannot be denied the benefit of grant-in-aid to the extent of 100% of the entertainment tax for the first two years and the Government Order dated 14.7.1992. If at all, will apply prospectively, i.e., in respect of those persons who decided to construct new cinema hall on or after 14.7.1992 and had taken steps for the same thereafter. He submitted that consequently the other orders dated 16.7.1993, 22.7.1993, 13.9.1993 and 22.9.1993 are also illegal and cannot be allowed to stand. In support of aforesaid plea, the learned counsel for the petitioner has relied upon the decisions of the Hon'ble Supreme Court in the case of Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, and M/s. Pawan Alloys and Casting Pvt. Ltd., Meerut etc, etc. Vs. U.P. State Electricity Board and others, , and submitted that the State is bound by the promise it had made and on the ground of the principle of promissory estoppel, the State of U. P. is estopped from demanding 25% of the amount of entertainment tax from the petitioner in respect of the first 2 years.

6. Shri C. S. Singh, learned standing counsel, on the other hand submitted that even though, the petitioner had been granted permission by the District Magistrate, respondent No. 4. under Rule 3 (3) of the Rules for construction of the Cinema building on 20.2.1992, yet in view of the fact that the petitioner had completed the construction of the cinema building only on 20.2.1993 and had been granted licence to exhibit the cinematograph films thereafter when the Government Order dated 14.7.1992, had already come into existence, the petitioner is not entitled for grant-in-aid to the extent of 100% entertainment tax for the first 2 years as the same had been modified/substituted to 75% vide G. O. dated 14.7.1992. He further submitted that in the facts and circumstances of the present case, it cannot be said that the petitioner had taken effective steps for construction of the new cinema building within a short span of three months and has not altered its position. He submitted that the plea of promissory estoppel is not applicable in the present case and law applicable at the time of grant of licence is to be taken into consideration. He submitted that when the petitioner was granted licence to run/exhibit the cinematograph films in May, 1993, the Government Order dated 14.7.1992, had already come into force and, therefore, the petitioner was entitled for grant-in-aid of 75% of the entertainment tax for the first 2 years and not 100% of the entertainment tax.

7. He further submitted that there is no prohibition in law to review the policy regarding grant-in-aid. If the State Government has reduced the amount of grant-in-aid from 100% to 75% vide order dated 14.7.1992. no exception can be taken

to it. In support of this plea, he relied upon the decisions of the Hon'ble Supreme Court in the case of M/s. Pankaj Jain Agencies Vs. Union of India and others, , Kasinka Trading and another, etc. etc. Vs. Union of India and another, and State of Himachal Pradesh and others etc. Vs. Ganesh Wood Products and others, etc.,

8. Having heard the learned counsel for the parties, we find that admittedly in the present case, the petitioner had applied for grant of permission for the construction of a new cinema building on 18.11.1989 after purchasing the land on 15.11.1989 as per Annexure-2 to the writ petition. The licensing authority, respondent No. 4, had granted permission to the petitioner approving the site plan and for construction of cinema building under Rule 3 (3) of the Rules on 20.2.1992. The petitioner had started constructions thereafter, which had been completed on 20.2.1993. At the time when the petitioner had applied for permission under Rule 3 of the Rules. i.e.. on 18.11.1989 and when the permission under Rule 3 (3) was given on 20.2.1992, the Government Order dated 18.7.1989, was already in force which provided for grant-in-aid to the extent of 100% of the amount of entertainment tax to the new cinema halls for the period of first 2 years. Thus, the petitioner had acted on the promise/incentives announced by the State Government as contained in the order dated 18.7.1989 and has altered its position by investing money in the purchase of land and construction of the cinema hall. The scheme of grant-in-aid as given in the Government Order dated 18.7.1989, was applicable to those persons who applied for approval of the site plan during the period 1.4.1989 to 31.3.1994 and also applied for grant of licence between 1.4.1990 to 31.3.1995. In the present case, both the conditions have been fulfilled by the petitioner as he had applied for the grant of permission to construct cinema building and approval of site plan before 31.3.1994 and also for grant of licence sometimes in February, 1993, which licence was granted on 9.5.1993.

9. The only question remains as to whether the petitioner is entitled for grant-in-aid to the extent of 100% of the amount of entertainment tax for the first 2 years as provided in the Government Order dated 18.7.1989 or to the extent of 75% as provided in the Government Order dated 14.7.1992. It may be mentioned that by the Government Order dated 14.7.1992, clause 2 of earlier G. O. dated 18.7.1989. has been substituted by a new clause which provides uniform grant-in-aid of 75% of the amount of entertainment tax for all the three years in place of 100% for the first two years and 75% for the third year.

10. Answer to the aforesaid question would depend on the applicability of the principles of promissory estoppel. If we come to the conclusion that the doctrine of promissory estoppel is attracted in the present case, then the petitioner shall be entitled to grant-in-aid under the amended G. O. dated 18.7.1989, otherwise not. The Hon'ble Supreme Court in the case of Pawan Alloys and Casting Put. Ltd. (supra), after examining the various decision on the issue of promissory estoppel, has held as follows :

"10. It is now well-settled by a series of decisions of this Court that the State authorities as well as its limbs like the Board covered by the sweep of Article 12 of the Constitution of India being treated as "State" within the meaning of the said article, can be made subject to the equitable doctrine of promissory estoppel in cases where because of their representation, the party claiming estoppel has changed its position and if such an estoppel does not fly in the face of any statutory prohibition, absence of power and authority of the promisor and is otherwise not opposed to public interest, and also when equity In favour of the promisee does not outweigh equity in favour of the promisor entitling the latter to legally get out of the promise."

11. Thus, the State is bound by the promise which it had made in the event any person acting on such promise has changed Its position. From a perusal of the Government Order dated July 18, 1989, we find that with a view to encourage establishing new permanent cinema halls in areas where the population according to 1981 census was not more than 1.00,000, the State Government had announced incentives in the form of grant-in-aid which was equivalent to 100% of the amount of entertainment tax for the first 2 years and 75% of the entertainment tax for the third year. The net result of the aforesaid G. O. was that persons constructing new cinema halls who fall within the purview of the G. O. would not be liable to pay entertainment tax at all in the first 2 years and shall pay only 25% of entertainment tax In the third year as they were entitled to retain it as grant-in-aid. The State Government was competent to announce the incentives in the form of grant-in-aid to attract persons to construct new cinema halls in areas having population of 1,00,000 or less. The petitioner had also acted on the promise made by the State Government as contained in the said G. O. by purchasing the land for constructing a new cinema hall and had invested huge sum of money, in hope and belief that it will also get the grant in aid to the extent of 100% of the amount of entertainment tax in the first 2 years.

12. The respondents have not placed any material before the Court to show that the withdrawal of the incentives/grant-in-aid to the extent of 75% was in the public interest. Therefore, the equity which had arisen in favour of the petitioner remained untouched, undisturbed by any overwhelming and superior equity in favour of the respondents entitling them to withdraw in pre-mature manner leaving the petitioner high and dry before the requisite period of two years. The Hon"ble Supreme Court in the case of Pawan Alloys and Casting Pvt. Ltd. (supra), has held that where there is no such overriding public interest, It may be still open to the promisor-State or its delegate to resile from the promise on giving reasonable notice which need not be a formal notice giving the promisee a reasonable opportunity of resuming his position provided it is possible for the promisee to restore the status quo ante. In paras 36 and 37 of the decision rendered in the aforesaid case, the Hon"ble Supreme Court has held as under :

"36. As observed by this Court in Shrijee Sales Corporation, even where there Is no such overriding public interest, it might still be open to the promisor-State or

Its delegate to resile from the promise on giving reasonable notice which need not be a formal notice giving the promisee a reasonable opportunity of resuming his position, provided its is possible for the promisee to restore the status quo ante. Even on this aspect the respondent-Board has no case. It has not given any reasonable opportunity to the appellants to resume their earlier position. Nor is it shown by the Board that it is possible for the appellate-promisee to restore the Status quo ante. The reason is obvious. Once the new industries were lured into establishing their factories in the region catered to by the Board on being assured three-year guaranteed Incentive of development rebate of 10% on their total bills of electricity charges and acting on the same, once they had established their industries and spent large amounts for constructing the infrastructure and for employing necessary labour and for purchasing raw materials, etc. it would be almost impossible for them to restore the status quo ante and to walk out midstream If the development rebate incentive was withdrawn for the unexpired period out of the three years" guaranteed period of currency of development rebate incentive. In fairness even it was not suggested by learned senior counsel for the respondents that on such withdrawal of development rebate the appellants would be able to restore the status quo ante and walk out. He simply relied upon the ratio of the decision of this Court in the case of Shrijee Sales Corporation for contending that it is the power of the Board to grant the rebate and it is equally the power of the Board to withdraw the same in its own discretion.

37. Consequently, it must be held that the twin aspects highlighted by this Court in Shrijee Sales Corporation, on the basis of which the authority promising a particular course of conduct on its part to the prospective promisee can resile from the promise even prematurely are not found established on the facts of these cases. Consequently the ratio of the said decision cannot be of any avail to the respondent-Board."

13. Applying the principles laid down by the Hon"ble Supreme Court, in the aforesaid case, we find that the respondents have not placed any material on record before the Court nor have shown that by reducing the amount of grant-in-aid from 100% of the entertainment tax to 75% of the entertainment tax for the first 2 years, it is possible for the petitioner to restore the status quo ante.

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 Pawan Alloys and Casting Pvt. Ltd. (supra), 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 M/s. Pankaj Jain

Agencies (supra), 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.

However, there shall be no order as to cost.