

(2009) 11 PAT CK 0008
In the Patna High Court

Karman Dana and Others Vasant Talkies	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 19-11-2009

Acts Referred:

Bihar Entertainment Tax Act, 1948 — Section 3(B)(1)

Citation : (2009) 11 PAT CK 0008

Hon'ble Judges : Ajay Kumar Tripathi, J

Bench : Single Bench

Judgement

Ajay Kumar Tripathi, J.—All the three writ applications have common question of law and fact and therefore they are heard together and are being disposed of by this common order.

2. Basic submission on behalf of the petitioners is that there was compounding of taxation which these petitioners ought to pay on the basis of seat capacity which has been fixed by the licensing authority over a period of time. It was found by them that it was not a viable proposition, therefore they wanted to reduce the number of seats as well reduction in the taxation proportionately. Applications came to be made by the petitioners before the District Magistrate, who is the licensing authority and they were on a bona fide believe that the applications will be acted upon and appropriate order will be passed at the shortest possible time. Petitioners took further step in this regard and they filed appropriate applications for reduction or refixation of the taxes under Sub-section (1) of Section 3(B) of the Bihar Entertainment Tax Act 1948 before the competent authority. They also started depositing the reduced entertainment taxes on the basis of reduction of seats, the receipts of which has been brought on record. There are some other aspects of dispute which are not very relevant for adjudication of the present cases.

3. One thing which has emerged is that the District Magistrate was pleased to grant permission to reduce the number of seats of these petitioners but it was from the date of the order i.e. 23.6.2004 and not from the date of applications.

Therefore, the Licensing authority raised a demand upon the petitioners to pay up the difference between 1.4.2004 to 22.6.2004 and they also decided to impose penalty for non-payment of tax amounts.

4. Submission of learned Counsel for the petitioners is that the licensing authority ought to have granted permission or reduction in the number of seats and the corresponding deposit of the entertainment tax from the date of applications, more so, when the petitioners had already started taking steps of deposit of tax on the reduced amount on their own which only establishes their bona fide that they did not want to shy away from depositing the liability or the taxes under the Entertainment Tax Act. Further submission is that the whole problem has arisen due to delay in decision making process. The calculated amounts on reduced seats were regularly deposited by the petitioners and issue therefore is only the difference between the original compounded quantity of the tax and the reduced amount which was worked out on the basis of the reduced seats. These are circumstances to show that the petitioners did not deliberately avoid paying taxes or evading taxes. The issue became alive due to delay in decision making process or miscalculation on their part on a bona fide believe that the permission for reducing seats and the corresponding liability of tax would be granted by the licensing authority from the date of applications.

5. One aspect which has been pointed out by the learned Counsel representing the State is that there is no provision to make any change or addition in the number of seats without prior permission, in writing, from the licensing authority. The seats can be reduced only after the permission is granted by the licensing authority and that is one of the primary reasons why the District Magistrate did accept the prayer of the petitioners but only from the date he passed the order. Once the order has been passed the benefit will accrue to the petitioners from that date alone but they cannot be allowed to pay taxes deliberately on the basis of the reduced seats in absence of permission merely because applications were made by them with the hope that it will be accepted and allowed. To that extent the contention of learned Counsel for the State is well founded. The petitioners have liabilities to pay the taxes as per the original compounded amount before reducing the seats.

6. So far as the penalty is concerned which has been imposed upon the petitioners is one aspect of the matter which requires to be looked into by the taxing authority looking at the conduct and bona fide of the petitioners. It cannot be said that they deliberately wanted to avoid payment or to evade payment of entertainment tax which was earlier fixed by the licensing authority. There can be an occasion for the competent authority to consider either reduction or waiver of the penalty amount, if such a prayer is made by the petitioners before the Assistant Commissioner, Commercial Taxes, Katihar Division, respondent No. 4.

8. These writ applications stand disposed of with the above observation.