
(1995) 02 AHC CK 0081

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No. 24464 of 1994

Lalla Babu Keshri and Anr.

APPELLANT

Vs

D.M.Allahabad & Anr.

RESPONDENT

Date of Decision : 02-02-1995

Acts Referred:

Citation : (1995) 02 AHC CK 0081

Hon'ble Judges : A.P.Misra, J and J.S.Sidhu, J

Final Decision : Allowed

Judgement

1. Counter and rejoinder Affidavits have been exchanged between the parties.
2. Heard learned Counsel for the petitioners and also the learned Standing Counsel.
3. In view of the facts and circumstances of this case and also as agreed by the counsel for the parties the present petition is disposed of finally at the stage of admission.
4. Petitioners seek quashing of the order dated 18/7/1994 passed by respondent No. 2 (Annexure 2 to the writ petition) by virtue of which petitioner's application for reducing the number of shows from 3 shows to 2 shows was rejected and they further pray for a mandamus directing the respondents not to compel the petitioners to deposit the tax on the gross collection capacity of running cinema for three shows in a day. The case of the respondents that they have communicated vide their letter dated 24/3/1994 with reference to the petitioners application informing the petitioners that they have to make payment in form "R" on the basis of compounded system of payment of tax for the year 1994-95. The said letter further indicates that since the petitioners' application contains proposal of running only three shows per day whereas the petitioners were running four shows per day on the date when the Act in question was amended, therefore, the petitioners' option was rejected. The said order was challenged by means of another writ petition to which we are not concerned and which case

also been decided by this Court. Thereafter the petitioners' option to run the cinema according to form "R" for the year 1994-95 has been accepted by the respondents. Thereafter the petitioners feeling the running of cinema uneconomical, through an application dated 6/7/1994 which is Annexure 1 to the petition requested the respondents to reduce the number of shows from three shows to two shows per day and also for amending the order accordingly. It is through an order dated 18/7/1994 the petitioners' aforesaid application dated 6/7/1994 has been rejected. This order was passed on the ground that since the petitioners have already declared that they would run three shows in the financial year 1994-95 which was accepted by the respondents, the present modification now sought by the petitioners by their application dated 6/7/1994 amounts reduction in the gross collection capacity and then the proposal of the petitioners to reduce the number of shows cannot be accepted. It is this order which is subject matter of challenge which is up for consideration by us.

5. The question whether a licensee under Rule 24A after exercising option could reduce the number of shows of cinema or not has already been considered and decided by this Court in Civil Misc. Writ Petition No. 1978 of 1994 *Mulchandra Gupta and Ors. v. District Magistrate, Jaunpur and others*, in which it is held that subrule (4) of Rule 24A implies that, that change in the declaration already made is possible but that is subject to the permission of the District Magistrate. In the present case, no doubt the option exercised earlier for accepting three shows per day but by means of subsequent application, to reduce the number of shows of the petitioners' cinema, is similar to the case which has been decided earlier. Rule 24A (4) of the aforesaid rules is quoted as under:

"Rule 24A (4). The proprietor shall strictly adhere to the declaration under subrule (1) and shall obtain permission of District Magistrate, before effecting of change in the number of seats, the ticket rate and the number of shows."

The said subrule (4) clearly makes it clear that even after the option is exercised or the declaration made under subrule (1) the petitioner may effect the change in number of seats, the ticket rate and the number of shows after obtaining permission of the District Magistrate. Thus the stand taken by the respondents that once the option exercised is irrevocable, does not stand. Thus even after exercise of option there is right of the proprietor to effect change in number of seats, the ticket rate and the number of shows, this is after obtaining permission of the District Magistrate. This obtaining of permission is not a restriction on the right of the proprietor to reduce number of its shows, seats or rate of his ticket but to enable the authorities to amend its records to effectuate effective control and collection of taxes. Hence rejection of petitioners' application for reduction of shows from three shows to two shows by means of an order dated 18/7/1994, Annexure 2 to the writ petition, is not sustainable. Accordingly, we quash the order dated 18/7/1994 (Annexure 2 to the petition) passed by the respondents and direct the respondent to pass appropriate orders in the light of observations made above preferably within two weeks from the date the certified copy of this

judgment is filed before the concerned authority. The petitioners will file the certified copy of this judgment within one week from today. Any security deposited by the petitioners in terms of the interim order dated 2871994 for one additional show stand discharged. Accordingly, the petition is allowed with costs.

6. Certified copy of this judgment be issued to the counsel for the petitioners on payment of usual charges within three days.