(2003) 04 AHC CK 0121

In the Allahabad High Court

Case No : C.M.W.P. No. 614 of 1992

Manisha Palace — APPELLANT

Vs

State of U.P. and Another — RESPONDENT

Date of Decision : 07-04-2003

Acts Referred:

Citation : (2003) 3 AWC 1697

Hon'ble Judges : Prakash Krishna, J;M. Katju, J

Bench : Division Bench

Advocate : Bhagwati Prasad, Birendra Singh, Ambrish Kumar Sharma, C. Dixit and Dinesh Dwivedi, for the Appellant;

Final Decision : Dismissed

Judgement

M. Katju, J.—This writ petition has been filed for a writ of certiorari to quash the impugned G.O. dated 14.5.1992 Annexure-4 to the writ petition and the order of the District Magistrate, Hamirpur of May, 1992 Annexure-5 to the writ petition.

2. We have heard the learned counsels for the parties.

3. The petitioner constructed a Cinema Hall named "Manisha Palace" for the purpose of exhibiting cinema. He applied for a licence under the Cinematograph Act, 1918 and the District Magistrate, Hamirpur, granted a licence u/s 3 of the aforesaid Act for a period from 1.5.1992 to 31.3.1993. Photocopy of the licence is Annexure-1 to the writ petition. After the grant of the aforesaid licence, the petitioner started showing cinemas in the Cinema Hall regularly w.e.f. 5.5.1992.

4. In paragraph 4 of the writ petition it is alleged that with a view to encourage the construction of new Cinema Halls in the small towns of the State, the State Government on 18.7.1989 issued a G.O. providing for grant of certain incentives to such Cinema Halls in the shape of grant-in-aid out of the amount of entertainment tax under the U. P. Entertainment and Betting Tax Act, 1979. In this G.O. it was provided that if a new Cinema Hall is constructed within a specified period in such area/place the total population of which is not more than

one lakh, the total amount of entertainment tax payable by such Cinema Halls in the first two years will be given as grant-in-aid but in the third year the amount of grant-in-aid will be only 75% of the total amount of entertainment tax payable. It was only after the issue of the aforesaid G.O. that the petitioner was encouraged and he constructed the Cinema Hall in question in Kabrai town, the total population of which is according to the census of the year 1981 only 9512. The District Magistrate while granting the licence u/s 3 of the Cinematograph Act granted the said benefit of grant-in-aid to the petitioner as provided in the aforesaid G.O. Photocopy of the orders of the District Magistrate in this connection are Annexure-2 to the writ petition. On 5.5.1992, the District Magistrate also passed an order u/s 8 (b) of the U. P. Entertainment and Betting Tax Act, 1979, photocopy of which is Annexure-3 to the writ petition.

5. It is alleged in paragraph 7 of the writ petition that the petitioner constructed the Cinema Hall after he was given assurance by the respondents that the benefit of grant-in-aid under the policy of the State Government as contained in the aforesaid G.O. will be given to the petitioner. However, on 14.5.1992 the State Government issued another G.O. providing that now the amount of grant-in-aid to be given to the Cinema Halls in question for the first year, second year and third year will be equal to 75% of the entertainment tax instead of 100% of the amount of entertainment tax for first year and second year as provided in the earlier G.O. dated 18.7.1989. Photocopy of the G.O. dated 14.5.1992, is Annexure-4 to the writ petition. In pursuance of the G.O. dated 14.5.1992 the District Magistrate. Hamirpur. has Issued an order copy of which is Annexure-5 to the writ petition directing the petitioner to deposit the sums mentioned in the said order within a week.

6. It is alleged in paragraph 10 of the writ petition that the impugned G.O. dated 14.5.1992 and the order of the impugned District Magistrate are illegal as the petitioner had constructed the Cinema Hall on the assurance given in the earlier G.O. dated 18.7.1989 and the Government has now estopped from making any change in the policy by modifying that Government order. It is alleged in paragraph 11 of the writ petition that the Cinema Hall of the petitioner was constructed prior to the issuance of the G.O. dated 14.5.1992 and the licence was given to the petitioner prior to the said Government order and it also started running and exhibiting cinemas from 5.5.1992, i.e., prior to the G.O. dated 14.5.1992. It is alleged in paragraph 13 of the writ petition that the impugned order of the District Magistrate was passed without giving opportunity of hearing to the petitioner.

7. A counter-affidavit has been filed by the respondents and we have perused the same. It is alleged in paragraph 4 of the same that the licence for the cinema was granted on 1.5.1992 and the period of the licence was from 1.5.1992 to 31.3.1993. In paragraph 6 of the counter-affidavit it is stated that the petitioner is liable to pay entertainment tax from 15.5.1992 to 21.5.1992, i.e., 25% entertainment tax, and after completing three years he is liable to pay

entertainment tax at the rate of 25% and he will get grant-in-aid only of 75% of the entertainment tax for two years.

8. A rejoinder-affidavit has been filed and we have perused the same. It is alleged in paragraph 4 of the same that the petitioner had made heavy investment in the construction on the assurance given in the G.O. dated 18.7.1989 and hence he cannot be deprived of the benefit of the said G.O. The petitioner has made constructions and made other investments prior to the G.O. dated 14.5.1992. It is alleged in paragraph 5 that the G.O. dated 14.5.1992 should be applicable to the cinemas which are granted licence after that date.

9. In our opinion, the contention of the learned counsel for the petitioner is correct. It is well-settled that a G.O. cannot be with retrospective effect, unless it is issued under the Statute which permitted retrospective issuance of such G.O. It is admitted by the respondents that the petitioner constructed his Cinema Hall prior to the issuance of the G.O. dated 14.5.1992 and it was granted licence prior to that date and it started running and exhibiting cinemas from 5.5.1992. Had the G.O. dated 18.7.1989 not been issued. It is quite possible that the petitioner may not have constructed the Cinema Hall. In our opinion, the State Government is estopped from making any changes and reducing the grant-in-aid regarding entertainment tax in respect of Cinema Hall which was granted licence prior to 14.5.1992 as the G.O. dated 14.5.1992 is not retrospective. No doubt It is open to the State Government to modify or even cancel its earlier G.O. but the said modification/cancellation cannot be with retrospective effect.

10. In Union of India v. Indo Afghan Agencies Ltd. AIR 1968 SC 718 , the doctrine of promissory estoppel was accepted by the Supreme Court and this view has subsequently been followed by several other decisions of the Supreme Court e.g. Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another,

11. Following the aforesaid decisions this petition is allowed. We hold that the G.O. dated 14.5.1992 does not operate retrospectively and hence it will not be applicable to the petitioner''s Cinema Hall. The impugned order of the District Magistrate of May, 1992, copy of which is Annexure-5 to the writ petition is hereby quashed.

