

(2005) 01 AHC CK 0071
In the Allahabad High Court
Case No : C.M.W.P. No. 428 of 1996

Menka Picture Palace and Another

APPELLANT

Vs

D.M. and Another

RESPONDENT

Date of Decision : 20-01-2005

Acts Referred:

Uttar Pradesh Entertainments and Betting Tax Act, 1979 — Section 3, 3(1)
Uttar Pradesh Entertainments and Betting Tax Rules, 1981 — Rule 13, 24A, 24A(2),
24A(3), 24A(4)

Citation : (2005) 2 AWC 1316 : (2005) 2 ESC 949

Hon'ble Judges : R.K. Agrawal, J;Prakash Krishna, J

Bench : Division Bench

Advocate : R.P. Misra, for the Appellant; S.P. Kesharwani, S.C., for the Respondent

Final Decision : Allowed

Judgement

Prakash Krishna, J.—Petitioner No. 1 is a picture hall of which petitioner No. 2 is the proprietor and licensee to exhibit cinema films. It has been granted licence to exhibit cinema under the U. P. Entertainment and Betting Tax Act, 1979 and Cinematograph Act, 1952 at Salempur, district Deoria. The petitioners are liable to pay entertainment tax for the admission to the entertainment provided to the public in the picture hall. The petitioner has opted for payment of compound entertainment tax u/s 3 (1) of the U.P. Entertainments and Betting Tax Act, 1979, (hereinafter referred to as the Act of 1979) for the year 1996-97 and accordingly it complied with the entire formalities as prescribed under Rule 24A of the U.P. Entertainment and Betting Tax Rules, 1981 (hereinafter called as the Rule of 1981). Respondent No. 1 by the impugned order dated 25th May, 1996 (filed as Annexure-2 to the writ petition) has rejected the said application for compound payment of entertainment tax on the ground that there has been a change in the ticket rate and also for the number of shows which would result in reduction of the entertainment tax in comparison to that of the last year. Feeling aggrieved against the aforesaid order the present writ petition has been filed on

the allegations that the impugned order is wholly arbitrary and illegal.

2. It is not in dispute that the petitioner had applied for payment of compound entertainment tax for the immediately preceding year which was also rejected. Against that order the petitioner had filed Writ Petition No. 690 of 1995, which has been dismissed by this Court on 8th May, 1996.

3. The grievance of the petitioner is that the rejection of the compounding application under Rule 24A of the Rules, 1981 is beyond the four corners of the aforesaid Rule. It has been stated that the petitioner's picture palace is in a rural area having a population of 12,778. Under the aforesaid Rules the petitioner filed an application in the prescribed Form-R and it has given declaration to the effect that he will exhibit three shows, i.e., noon (12 to 15 hrs.), matinee (15 to 18 hrs.) and night (20 to 23 hrs.). Further submission is that the cinema of the petitioner is situated in a local area having population not exceeding one lac and as the petitioner has complied with all the conditions as laid down under Rule 24A of the Rules, 1981, the impugned order is liable to be quashed.

4. On behalf of the respondents a counter-affidavit has been filed on the allegations that there would be loss of revenue, in case the petitioners' application for compound payment of entertainment tax, is allowed. The petitioner currently has fixed the ticket rate of balcony at Rs. 6.00 and of D.C. at Rs. 4.00. Earlier to it the rate of balcony was Rs. 8.00 and that of D.C. was at Rs. 6.00. He was exhibiting four shows earlier in the picture hall and currently only three shows are being exhibited therein. The petitioners had also filed Writ Petition No. 3293 of 1994 before the Lucknow Bench of this Court for the purpose of reduction in the rate of tickets and reduction of shows. All these attempts are being made by the petitioner with a view to reduce the revenue collection by way of entertainment tax of the State Government. Further allegations are that the respondent, i.e., the District Magistrate is not bound to accept the compounding application of the petitioners as it is not in the interest of the Revenue. In paragraph 4 of the counter-affidavit it has been stated that the application under Rule 24A (4) of the Rules, 1981 can be accepted only when there is upward revision of the entertainment tax. Since in the petitioner's case there is likelihood of reduction of revenue receipt by way of Entertainment Act, the impugned order was correctly passed.

5. Heard Sri R.P. Misra, learned counsel for the petitioner and Sri S.P. Kesharwani, learned counsel for the respondent.

6. The case was heard on various dates. Learned counsel for the petitioner stated that the writ petition filed by them before the Lucknow Bench of this Court for reduction of seating capacity in the picture hall and the number of shows has been dismissed. This Court by the order dated 16.9.2004 directed the learned standing counsel to produce the record of the previous year in order to show as to what was the seating capacity, number of shows and ticket rates for these two years. The order dated 16.9.2004 is quoted below :

"It has been stated by Shri R.P. Misra that the writ petition filed before the Lucknow Bench of this Court seeking permission to reduce the seating capacity of cinema hall has since been dismissed. Learned standing counsel is directed to produce record of the previous year and the year in question in order to show as to what was the seating capacity, number of shows and the ticket rates of these two years. List on 11th October, 2004."

7. Further on 1st November, 2004, the learned standing counsel submitted that the records are available with the department and he has sought reliance upon certain documents in support of the plea that number of shows, ticket rates of admission has been reduced. He was directed to file the same along with the supplementary counter-affidavit within a week. The order dated 1st November, 2004 is quoted below :

"Shri S.P. Kesarwani has prayed that the records are available with the department and he has relied upon certain documents in support of the plea that the number of shows and the ticket rates of admission has been reduced.

He is directed to file it along with supplementary counter-affidavit within a week. Reply be filed within one week thereafter. List on 23rd November, 2004."

8. In compliance of the aforesaid order, the respondents have filed a supplementary-affidavit of Shri B.P. Pyana, District Entertainment Officer, Deoria. In paragraph 3 of the affidavit it has been mentioned that the deponent tried to collect entire record relating to the year in question, i.e., year 1996-97 but same could not be obtained as officer-in-charge of Collectorate, Deoria (Record Room) has communicated vide letter No, 4 dated 14.10.2004 that records have been weeded out. However, in rest of the paragraphs of the said affidavit an attempt has been made to justify the impugned order on merits. A copy of the judgment of this Court dated 8th May, 1996, passed in Writ Petition No. 690 of 1995 which is inter partes has also been annexed as Annexure-SA 3 to the affidavit.

9. We have carefully considered the respective submissions of the learned counsel for the parties. The controversy centres around about the interpretation of Rule 24A of Rules, 1981. Section 3 of the Act, 1979, is charging section. It provides the levy of entertainment tax for admission to any entertainment. Proviso to Section 3 is substantive provision and it lays down that a proprietor of a cinema in an area having a population not exceeding one lac may in lieu of payment under this sub-section pay a compounded payment of entertainment tax to the State Government on such conditions and in such manner as may be prescribed and at such rate as the State Government may from time to time notify and different rates of compounded payments may be notified for different categories of local areas. A bare perusal of Section 3 of the Act, 1979, clearly shows that its proviso on fulfilment of certain conditions gives an option to a proprietor of a cinema to opt to pay a compounded payment to the State Government. In the absence of option exercised by such a proprietor of cinemas, he will be liable to pay the entertainment tax as per Sub-section (1) of Section 3

of the Act, 1979, i.e., on actual basis. In the light of proviso to Section 3 (1) of the Act, 1979, Rule 24A was inserted in the Rules, 1981, w.e.f. 1st of May, 1989. The said Rule reads as follows :

"24A. Compounded payment of tax.--(1) The proprietor of a cinema opting to make compounded payment of entertainment tax under the proviso to Sub-section (1) of Section 3 of the Act shall submit his written option in duplicate to the District Magistrate before the last date fixed by the Commissioner in this behalf in Form "R" appended to these rules declaring the total number of shows to be exhibited in a day, number of seats in the cinema classwise and the rates of tickets at full price and on reduced price if any.

(2) The option once exercised shall be valid for the period of a financial year.

(3) (i) The District Magistrate shall within a week of the receipt of the application, communicate to the proprietor the gross collection capacity and the weekly tax payable by the cinema in Form "S".

(ii) The gross collection capacity shall be calculated by multiplying the number of seats in various classes in a cinema by the respective current ticket rates (including payment for admission and entertainment tax thereon) and multiplying the sum so derived by such number of shows as the proprietor of the cinema declares to give in a day.

Explanation.--For purposes of this sub-rule "the number of seats in various classes in a cinema" means the maximum permissible number of seats in various classes mentioned in the licence thereof and shall include any increase in the maximum number of seats by an amendment allowed by the Licensing Authority."

10. From a bare perusal of the above Rule the following things are clear. The proprietor of a cinema opting to make compounded payment of entertainment tax has to submit his option in writing in duplicate in the prescribed Form-R to the District Magistrate before the last date fixed by the Commissioner in this behalf. He has to declare the total number of shows to be exhibited in a day, number of seats in the cinema classwise and rates of tickets at full price and on reduced price if any. The option once exercised is irrevocable for the period of financial year. A duty is cast upon the District Magistrate to communicate to the proprietor the gross collection capacity and the weekly taxes payable by the cinema in Form S. The manner of calculation of gross collection capacity has been provided by Sub-rule (3) (ii) to Rule 24A. The Explanation attached to the aforesaid Sub-rule (2) is also of the same significance. In view of the Explanation the number of seats in various classes in a cinema means the maximum number of seats in various classes mentioned in the licence thereof and shall include any increase in the maximum number of seats by an amendment allowed by the licensing authority. Rule 24A provides the entire mechanism for the purpose of calculation of gross collection capacity. It also provides that if there is an increase in the number of seats, the District Magistrate shall have the power to revise the compounded amount of tax upwards in the gross collection capacity increased,

as a result of such permitted change. The aforesaid provision does not show that the District Magistrate has discretion to accept or not to accept an option of the proprietor of a cinema to make compounded payment of entertainment tax provided he fulfils the condition as laid down under proviso to Sub-section (1) of Section 3 of the Act. At least the learned standing counsel could not point out any such provision either from the Act, 1979 or from the Rules, 1981, which may show that the acceptance of option is at the discretion of the District Magistrate. Moreover, the learned standing counsel could not show that if the District Magistrate comes to a conclusion that in the event of acceptance of the compounded payment of entertainment tax there is likelihood of some loss of revenue, he can in his discretion reject the option of the proprietor of the cinema to pay the entertainment tax under the scheme of compounded payment of tax. The discretion to pay actual tax or on compound basis, if any, is of a proprietor of a cinema hall. In taxing statutes provisions for payment of tax on lump sum basis or on compound basis are made for the convenience of the tax payers. Such schemes are framed with the view point of tax payers to simplify the procedure and relieve them from many legal and procedural formalities, and also to ensure the hassle free collection of revenue.

11. Before the Supreme Court in the case of Venkateshwara Theatre Vs. State of Andhra Pradesh and Others, , the validity of the provisions of consolidated levy on basis of gross collection capacity per show under Andhra Pradesh Entertainment Tax Act was challenged. Prior to the introduction of provision of consolidated levy on basis of gross collection capacity per show was introduced, the entertainment tax was payable on the basis of per payment for admission prescribed u/s 4 (1) of that Act. After amendment the aforesaid provision was deleted and the State Government provided for payment of entertainment tax of consolidated levy on the basis of gross collection capacity per show. In that connection it was observed by the Supreme Court that the fact that instead of tax being levied on the basis of payment for admission made by the persons actually admitted in the theatre it is being levied on the basis of the gross collection capacity per show calculated on the basis of the notional aggregate of all the payments for admission which the proprietor would realize per show if all the seats or accommodation in respect of the place of entertainment, are occupied and calculated at the maximum rate of payments for admission would not alter the nature of the tax or the subject-matter of the tax which continues to be a tax on entertainment. The mode of levy based on per payment for admission prescribed u/s 4 (1) prior to amendment by Act 24 of 1984 necessitated enquiry into the number of shows held at the theatre and the number of persons admitted to a cinema theatre for each show and gave room for abuse both on the part of proprietor as well as other officers in charge of assessment and collection tax. Further it was observed as follows :

"..... (Compounded payment of entertainment tax) is a more convenient mode of levy of the tax inasmuch as it dispenses with the need to verify or enquire into the number of persons admitted to each show and to verify

the correctness or otherwise of the returns submitted by the proprietor containing the number of persons admitted to each show and the amount of tax collected."

12. The aforesaid judgment has been followed by the Supreme Court in the case of State of Kerala and Anr. v. Builders Association of India and Ors. 1997 UPTC 12. It was held that payment of alternate method of taxation is a convenient, hassle free and simple method of assessment. The relevant portion is quoted below :

"Thus, impugned sub-sections have evolved a convenient, hassle free and simple method of assessment just as a system of levy of entertainment tax on the gross collection capacity of the cinema theatre

It is only, an alternative method of ascertaining tax payable which may be availed of by a contractor if he thinks it advantageous to him

Several taxing enactments contained provisions for composition of tax liability which may some times to be in the interest of both revenue and the assessee."

13. The object of levy of compounded payment of tax is not to increase the revenue. The Legislatures provide alternate method of taxation with a view to realize the tax with least discomfort to the assessee. It is only a convenient mode of realization of tax. It also ensures the fixed amount of payment of tax to the Government irrespective of the fact that the business of the assessee earned any profit or not.

14. Reverting to the impugned order, we find that the District Magistrate by the impugned order dated 25.5.1996 has refused to accept the option exercised by the petitioner to pay compounded entertainment tax on the ground that there is possibility or likelihood of loss of entertainment tax and in the interest of revenue it is not possible to accept the option. He concluded that there would be loss of revenue in the entertainment tax and thus the option exercised by the petitioners cannot be accepted. He has stated that in view of change in the rate of tickets and of shows there would be reduction in the gross collection capacity and there would be loss of entertainment tax in comparison to that of the preceding year's collection. The details of the changes if any in the rate of tickets or shows not having been mentioned in the impugned order, the order is cryptic one. It appears to have been passed without taking into consideration the relevant facts and figures on the aforesaid two questions with regard to the change in the rate of tickets and number of shows. In paragraph 11 of the writ petition there is factual averment that there is no change either in the number of seats, rate tickets or number of shows in the relevant year 1996-97. The position as it was existing in the previous financial year, i.e., 1995-96 continues to be the same. Paragraph 11 of the writ petition is quoted below :

"11. That here it is pertinent to point out that the seats, rates and number of shows, i.e., three shows mentioned by the petitioner in Form "R" for the year

1996-97 is the same as was existing in the previous financial year, i.e., 1995-96 and in this regard to be more specific relevant to note that the petitioner picture palace has total number of seats to be 702 out of which 234 seats are at Balcony and 468 seats are at Dress Circle and the rate for Balcony is Rs. 6 per seat and for Dress Circle Rs. 4 per seat and the same was the mode of payment , of entertainment tax in normal manner by the petitioner for the financial year 1995-96 and there at the rate for Balcony and Dress Circle were Rs. 6 and Rs. 4 respectively and the number of seats in Balcony and Dress Circle were 234 and 468 respectively total 702. Thus, it is pertinent to point out that the petitioner has not come with any distinction or difference from the previous financial year, i.e., 1995-96 in the present financial year, i.e., 1996-97 in order to establish the same, the details of the previous year pertaining to number of seats, ticket rate and number of shows are being filed herewith and marked as Annexure-3 to the writ petition."

15. Its reply has been given in paragraph 11 of the counter-affidavit of Sri Indrajeet Shahi, the Entertainment Officer. He has not disputed the contents of paragraph 11 of the writ petition. Paragraph 11 of the counter-affidavit is quoted below :

"Yah hai ki yachika ke prastar 11 main kist tippni ki avshyakata nahin hai."

16. The contesting respondents have not disputed the contents of paragraph 11 of the writ petition. In the absence of specific denial of the contents of paragraph 11 of the writ petition the averments of paragraph 11 of the writ petition stands proved. Thus, the impugned order stands vitiated. It has been passed on irrelevant considerations. In this connection an opportunity was given to the learned standing counsel to produce the relevant record by the order dated 16.9.2004. He was directed to produce the record of the previous year and in the year in question in order to show as to what was the seating capacity, number of shows and ticket rates of these two years. On 1.11.2004, Sri S.P. Kesharwani, learned standing counsel submitted that the records are available with the department. He was directed to file relevant documents to be relied upon by him in support of the plea that the number of shows, tickets of admission has been reduced. In compliance of the aforesaid order a supplementary-affidavit of Shri B.P. Pyana was filed. In paragraph 3 of the said affidavit it has been stated by him that the record for the year 1996-97 could not be obtained as the Officer Incharge of Collectorate, Deoria (record room) as indicated vide his letter No. 4 dated 14.10.2004, the records have been weeded out. He also unsuccessfully tried to trace out the record from the office of the Commissioner, Entertainment Tax, U. P., Lucknow, vide para 4 of the affidavit. In this factual background, we are left with no other option, except to accept the averments of paragraph 11 of the writ petition as correct. But that is not the end of the matter. We have also examined the case, apart from the factual angle also with the legal angle.

17. We now take up the objection raised by the District Magistrate with regard to the number of seats in the impugned order. For the purpose of calculation gross

collection capacity, "the number of seats in various class in cinema," under the Explanation to Rule 24A (2) (ii) means the maximum permissible number of seats in various class mentioned in the licence thereof and shall include any increase in the maximum number of seats. It is not the case of the respondents that in the prescribed Form R the petitioner has disclosed the number of seats other than the maximum permissible number of seats in various class as mentioned in the licence. The number of seats having been defined in the Explanation attached to Sub-rule (2) to Rule 24A of Rules, 1981, should have been taken into consideration before passing the impugned order by the District Magistrate. The prescribed Form R also does not show that a proprietor of cinema has to disclose the number of seats in the cinema in the immediately preceding year. Therefore, the District Magistrate has wrongly taken into consideration the fact that there has been a change in the number of seats in the cinema of the petitioner in comparison to the earlier financial year. To put it differently the District Magistrate is required to take into account the number of seats as mentioned in the licence of the cinema along with the permitted increase in the number of seats, if any, to calculate the amount of compound payment of entertainment tax.

18. Learned standing counsel submitted that the petitioner intended to reduce the seating capacity and had filed Writ Petition No. 3293 of 1994 before the Lucknow Bench. Indisputably the said writ petition has been dismissed, meaning thereby that the petitioner has not been permitted to reduce the number of seats in the cinema hall. In absence of any factual finding that the petitioner as a matter of fact has reduced the number of seats, the mere application for permission to reduce the number of seats will not disentitle the proprietor of the cinema to exercise the option for payment of compounded entertainment tax. A proprietor is liable to pay the tax as per seating capacity as mentioned in his licence together with permitted increase, if any. The District Magistrate is to be guided by the said Explanation while considering the application for compounded payment of tax and it appears that he was swayed away in this case on irrelevant considerations.

19. The second ground taken in the impugned order is that there is a change in the ticket rates in comparison to that of the earlier year. We have already noticed that whether the change is towards upward or downward in the ticket rates has not mentioned in the impugned order. From the pleadings of the parties vide para 11 of the writ petition it is clear that there is no change in the rate of tickets. The petitioner has given the calculation to establish that there has been no distinction or difference from the previous financial year, i.e., 1995-96, and in the present financial year, i.e., 1996-97. Documentary evidence by way of Annexure-3 has also been filed which has not been disputed by the department/respondent, in the counter-affidavit. Annexure-3 is a copy of prapatrakha submitted before the authorities concerned in pursuance of Rule 13 of Rules, 1981, which cast a duty on the proprietor of every entertainment to prepare separately for each show a return in Form-B. Opportunity to produce the relevant

records was also given by the order dated 16.9.2004 but they failed to controvert the contents of para 11 of the writ petition, with the help of the original record.

20. A perusal of Rule 24A along with prescribed Forms-R and S show that the proprietor of a cinema has to declare the number of shows to be exhibited in a day. The proprietor shall obviously be bound to exhibit such number of shows as declared by him in the application for compounding of payment of entertainment tax. He could not obviously increase the number of shows to be exhibited in a day. There appears to be no provision, at least nothing could be pointed out by the learned standing counsel making it mandatory to a proprietor of cinema to accept the minimum number of shows. In this view of the matter in the present case, the petitioners have declared that they will exhibit three shows in a day. The District Magistrate in the impugned order has not pointed out as to how the said declaration is in violation of Rule 24A of the Rules, 1981.

21. Learned standing counsel placed reliance upon the judgment of this Court in the case of the petitioner in Writ Petition No. 690 of 1995, dated 8.5.1996, filed as Annexure-C.A. 2. We have given our thoughtful consideration to it. In the financial year 1995-96, the petitioners applied for compounding of payment of entertainment tax, inter alia on the ground of reducing of seating capacity, rate of ticket and number of shows. In that view of the matter the rejection of the petitioner's application for compounding of payment of entertainment tax was upheld by this Court being contrary to the provisions of Sub-rule (4) of Rule 24A. But for the financial year 1996-97, under consideration we have found that the petitioners have not violated the aforesaid Rule. Further there is no discussion on the merits of the case in the above judgment, except that the application being in violation of Sub-rule (4) of Rule 24A was rightly rejected by the authority below.

22. Strong reliance has been placed by the learned standing counsel on the judgment of the Supreme Court in the case of Deepak Theatre, Dhuri Vs. State of Punjab and others, . The said judgment has hardly any relevance to the controversy involved in the present case. The Supreme Court was examining the question with regard to the right of a proprietor of cinema hall to fix the rate of tickets and number of shows. It was held by it that the authorities may regulate the same and this will not violate any fundamental right of the proprietor of a cinema. In the present case, the petitioner is not seeking any variation either in the ticket rates or number of shows in the cinema.

23. In the result, the writ petition is on terra ferrma and is liable to succeed.

24. By means of interim order dated 1st of October, 1996, this Court passed the following stay order :

"Until further orders, operation of impugned order dated 25.5.1996, Annexure-2 to the writ petition made by respondent No. 1 will remain stayed, subject to the petitioner depositing entertainment tax on compounding taxes to be determined

by the respondents on the basis of the declaration made in Form "R", Annexure-1 to the writ petition and furnishing security to the satisfaction of respondents, on the difference of the amount worked out on compounding basis and the tax payable on the basis of sales of tickets for which the petitioner will continue to file Form "B" to the respondents."

25. The writ petition is allowed with costs and the impugned order dated 25th May, 1996 is quashed. A writ of mandamus is issued directing the respondents to accept petitioners' application for compounded payment of entertainment tax for the year 1996-97.

26. The security furnished by the petitioner in pursuance of the aforesaid interim order dated 25.5.1996 stands discharged and the respondents shall refund the security to the petitioner forthwith.