(2003) 04 AHC CK 0180

In the Allahabad High Court

Case No : C.M.W.P. No. 516 of 1999

Menka Theater and Another — APPELLANT

Vs

State of U.P. and Another — RESPONDENT

Date of Decision : 25-04-2003

Acts Referred:
Uttar Pradesh Entertainments and Betting Tax Act, 1979 — Section 11, 2(1), 3

Citation : (2003) 4 AWC 2616

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Advocate : Vivek Chaudhary, for the Appellant; K.M. Sahai, S.C., for the Respondent

Final Decision : Allowed

Judgement

Prakash Krishna, J.—By means of present writ petition the petitioner has prayed for quashing of the order dated 23.2.1999, passed by respondent No. 1. The petitioner No. 1 is a partnership firm, of which the petitioner No. 2 is one of the partners. The petitioners are carrying on the business of exhibiting cinematograph film and have obtained a licence under U. P. Cinemas (Regulation) Act, 1955.

2. In the normal course of business, two rates for admission in the picture hall have been fixed by the authority concerned in respect of cinema hall of the petitioners. One is the normal rate of admission as Rs. 6.22 for Balcony, Rs. 4.88 for Dress Circle and Rs. 3.55 for First Class. The second is, reduced admission rates, which are Rs. 4.66 for Balcony, Rs. 3.77 is for Dress Circle and Rs. 2.68 is for First Class.

3. The petitioner exhibited a film "1942 A Love Story" which was screened from 4.8.1994 to 10.8.1994. It was declared tax-free by the Government by Government order dated 2.8.1994. It appears that the petitioner exhibited the said film in the picture hall and charged full rate (Normal rate) as admission fee

from the persons.

4. Subsequently, proceedings were initiated against the petitioner by the Licensing Officer/District Magistrate, Meerut, on the allegation that the petitioner has violated the terms and conditions of the aforesaid Government order as it exhibited the film at full rate while immediately preceding film was exhibited at reduced rate. The licensing officer, respondent No. 1 to the writ petition after hearing the petitioner concluded that the petitioners have violated condition No. 2 of the said Government order and directed the petitioners by means of order dated 21.11.1994 to deposit Rs. 60,090.04 towards the assessment of Entertainment tax as well as penalty u/s 3 of U. P. Entertainments and Betting Tax Act, 1979. The appeal filed by the petitioners received the same fate from the State Government by order dated 23.2.1999. Both these orders are under challenge in the present writ petition.

5. The stand of the respondent in the counter-affidavit is that the film in question was repeat run of the film as it was already exhibited in "Apsara Cinema hall in district Meerut on 10.7.1994 and, thereafter, it was repeated In Menka Cinema Hall from 4.8.1994 to 10.8.1994. The further case of the department is that before exhibition of this film in the petitioner''s picture hall the petitioners had exhibited Film "Naam" from 28.7.1994 to 3.8.1994 and charged entry fees at reduced rate. Meaning thereby the respondents'' case is that since immediately preceding film was exhibited at reduced rate the picture in question being repeat run film, was required to be exhibited at reduced rate to the public as per Government Order dated 2.8.1999.

6. Heard Sri Vivek Chaudhary, learned counsel for the petitioners and Sri K. M. Sahai, learned Standing Counsel for the respondents.

7. The controversy involved in the present case centres round to the interpretation of condition No. 2 of the aforesaid Government order dated 2.8.1992. The condition is quoted below :

"Cinema swami dwara vibhin shreni me prachaltt (samanya) pravesh shulk ki daron men koi vridhi nahin ki jayegi our nahin unme aasno ki kshemta mey parivartan kiya jayga, Tatha."

8. According to learned Standing Counsel the phrase "Prachalit Samanya Parvesh Shulk" mean the rate of admission prevalent in the picture hall as was charged from the Cinemagoers for immediately preceding film. He further submitted that since the film "Naam" was the immediately preceding film and only reduced rate was charged by the petitioner for admission to the picture hall from the Cinemagoers. The said rates should have been charged from the Cinemagoers for the present film also. By exhibiting the present film on full rate and not on reduced rate, the petitioners have violated aforesaid condition No. 2 of the Government order. On the other hand, learned counsel for the petitioners submitted that meaning of the aforesaid phrase is that the normal rate of admission should be charged. According to me "Prachalit Samanya Parvesh

Shulk" means normal admission fees to the Cinema owners.

9. Learned counsel for the petitioner was directed to file a supplementary affidavit to give details of the name of the films, the admission rate charged free and not tax free film exhibited during the year 1994 In his picture hall. A supplementary affidavit has been filed by the learned counsel for the petitioners, A perusal of the said affidavit shows that in the year 1994, the petitioner exhibited 35 films on different period. Out of them, 14 films were exhibited on full rate while 18 films were exhibited on reduced rates. During this period, two films namely "Ishq Men Jeena Ishq Men Marna" and " 1942 A Love Story" were tax free films. The petitioners submit that "Ishq Men Jeena Ishq Men Marna" was the tax-free new film and it was shown at full rate but no objection was raised by the respondents. The film "1942 A Love Story" was also a new film and tax-free was rightly shown at full rate.

10. The exhibition of the films is fully regulated by different Acts and Regulations. A detailed procedure has been provided for imposition and realisation of entertainment tax under the provisions of U. P. Entertainments and Betting Tax Act, 1979. My attention was also invited to the Government order dated 28.6.1994 exempting entertainment tax on the film "Ishq Men Jeena Ishq Men Marna". The condition No. 2 of the said Government order also contained similar clause as the one in the present Government order.

11. Having considered the respective arguments of the parties, I am of the view that the impugned orders are wholly arbitrary and illegal. Admittedly, there were two admission rates, one is normal admission rate and another is reduced rate. In absence of anything to the contrary, it is the discretion of cinema hall owner to exhibit the film either at full rate/normal rates or at reduced rates. Learned Standing Counsel could not show any law or Government order under which Entertainment Tax Department can compel the picture hall owner to exhibit a film at reduced rate or full rate. From the above condition No. 2 of the aforesaid Government order, it is not clear that the film "1942 A Love Story" should have been exhibited at the reduced rate. The only restriction is that the cinema hall owners will not increase admission rate nor seating capacity. The further restriction Is that no other film shall be exhibited except the approved film along with the film in question.

12. I have gone through the aforesaid Government order with the help of both counsel. Learned standing counsel could not show me anything which may compel the Cinema owners to exhibit the film in question at reduced rate. The interpretation as put forth by the authorities below is not acceptable. If the plea of the respondent is accepted, meaning thereby if the immediately preceding film was being shown at full rate, then the film in question should also be shown at the full rate. This clearly shows that this would mean that rate of admission as to whether film in question should have been exhibited on full rate or reduced rate would have been dependent upon the rate of admission fee of immediately preceding film, which appears to be absurd. Reading of the Government order as

a whole, I am of the view that idea in the said Government order was the Cinema owners would not be entitled to increase rate of admission but it does not disentitle them to charge at the approved admission rate.

13. Section 3 of U. P. Entertainments and Betting Tax Act, 1979, is the charging section. It provides tax of payment for admission to entertainment at such rate not exceeding 150% of each such payment, as the State Government may from time to time notify in this behalf, shall be payable on admission to any entertainment. The payment for admission has been defined u/s 2 (1) of the said Act. It is for the owner of picture hall to fix quantum of payment for admission. In the entire Act, there is no restriction to restrict the right of picture hall owners to a certain amount of payment for admission. It is the sole discretion of the owner of the picture hall to fix payment for admission. The entertainment tax shall be calculated accordingly on payment for admission.

14. Section 11 of the said Act gives power to the State Government to exempt any entertainment or class of entertainment from the liability to pay tax under this Act. Under Sub-section (3), power has been given to the State Government to grant exemption from entertainment on terms and conditions, as may be fixed by it. In view of statutory scheme as provided under the said Act, the Licensing Authority either under U. P. Entertainments and Betting Tax Act, 1979 or under U. P. Cinemas (Regulation) Act, 1955, cannot force picture hall owner to run a particular film on a particular payment for admission.

15. The interpretation, which has been put by the respondents, if accepted, it would violate Section 3 of the U. P. Entertainments and Betting Tax Act, 1979. A plain reading of "pravesh shulk ki daron men koi vridhi nahin ki jayegi aur nahin unme aasno ki kshemta main parivartan kiya jayega Tatha" means that the rate of admission shall not be enhanced for the entertainment tax free film. A tax-free film can be exhibited either at full rate or at reduced rate as per discretion of the picture hall owner. The words "Prachalit" and "Samanya" support the view, which I am taking. These words suggest the current and normal admission rates, i.e., normal rate of admission or reduced rate of admission but not enhanced rate of admission. Thus, it is clear that the condition No. 2 of the said Government order means that while exhibiting the film exempt from payment of entertainment tax, picture hall owner cannot enhance admission fees. The intention of the Government is that the benefit of grant of exemption from payment of entertainment tax, should ultimately reach to the CInemagoers of the particular film.

16. In view of the above, the writ petition succeeds and is allowed. The impugned orders are quashed. The amount realised, if any, in pursuance of the aforesaid order shall be refunded to the petitioners forthwith.

