(2012) 12 AHC CK 0021

In the Allahabad High Court

Case No : Misc. Single No. 1996 of 1997

Mohammad Athar and Others APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision : 04-12-2012

Acts Referred:
Uttar Pradesh Cinemas (Regulation) Act, 1955 — Section 8

Citation : (2013) 63 VST 233

Hon'ble Judges : Arvind Kumar Tripathi, J

Bench : Single Bench

Advocate : Hari Om Singh, for the Appellant;

Final Decision : Allowed

Judgement

Arvind Kumar Tripathi J.

1. Heard learned counsel for the petitioners, learned standing counsel for the State and perused the record. The present petition has been preferred against the impugned order dated April 3, 1997 passed by respondent No. 1 (annexure 9) and order dated December 17, 1996 passed by respondent No. 2, Commissioner, Entertainment Tax, U.P., Lucknow (annexure 8) to the writ petition.

2. The leaned counsel for the petitioners submitted that the petitioners are proprietor of cinema hall "Naz Picture Palace" situated in the local area of Sardhana in District Meerut. Licence was granted to the petitioners under the provisions of the U.P. Cinema (Regulation) Act and U.P. Cinematography Rules and the cinema hall is governed by U.P. Entertainments and Betting Tax Act. On November 25, 1994, an inspection was made by the Additional District Magistrate, Meerut, along with three Inspectors of the Entertainment Tax Department at about 10.50 p.m. After the inspection no action was taken by the District Magistrate, Meerut, against the petitioner because no illegality or irregularity was found. Subsequently, the Commissioner, Entertainment Tax, U.P.,

Lucknow, respondent No. 2 issued an order dated November 28, 1994 by which the licence of the cinema hall was suspended with immediate effect and proceedings were proposed under sections 12 and 15 of the Act and u/s 8 of the U.P. Cinema (Regulation) Act, 1955. Seven charges were levelled against the petitioners are as follows:

First charge was that at the time of inspection the booking clerk closed the booking office from inside and the same was opened after inspection.

Second.--At the time of inspection form B was not found in the box meant for keeping the form B filled up with the details.

Third.--Form B was not prepared at 10 p.m.

Forth.--The ticket book which was used did not contain signatures of the Entertainment Tax Inspector, whose signatures was forged one.

Fifth.--During night show film SUHAG was exhibited and the same picture was exhibited and shown in the noon also. Though as notified by the petitioner film "Zurasic Park" was to be shown.

Sixth.--The program of film SUHAG was not submitted in the office of District Magistrate, and Seventh charge is that gate dairy was not filled by the time of inspection and the same was submitted after completion during inspection.

3. The learned counsel for the petitioners submit that all the charges and allegation were denied. He contended that the reply was submitted to the show-cause notice on December 5, 1994. There was no evidence to show that without signature of the Entertainment Tax Inspector the tickets were being used from serial No. 85501 to 86000 for balcony class and 58501 to 59000 for D.C. class. There was allegation of forged signature of Entertainment Tax Inspector, which was verified and signed by the then Entertainment Tax Inspector Sri Manoj Bajpai but neither it was verified from him nor signature was got verified by hand writing expert. No receipt was issued after recovery and seizure of the documents at the time of inspection. Any specimen signature was not obtained before the petitioner. The noon show of November 25, 1994 was inspected by the Entertainment Tax Inspector and it was found and verified by him that Zurasic Park was exhibited. However, his statement was also not recorded. The false allegations were made and on the basis of the charges levelled against the petitioners, the tax and penalty were imposed against him. Against the order passed by respondent No. 2, the appeal was preferred however, the appellate authority, respondent No. 1, failed to consider the defence of the petitioners and without passing the reasoned order merely approved the order passed by respondent No. 2 and not only approved but enhanced the tax liability against the petitioners by impugned order dated April 3, 1997. The impugned order is liable to be quashed and direction to be issued after affording opportunity of hearing to the petitioners.

4. The learned standing counsel submitted that the allegations and charges

against the petitioner are serious. From the facts and allegations it was found that there was evasion of tax hence rightly tax liability was fixed against the petitioner and he is not entitled for any relief. He submitted that though the appellate authority has not passed the detailed order, but he has considered the order passed by respondent No. 2, Commissioner, Entertainment Tax, U.P., Lucknow and approved the same hence detailed and reasoned order was not required.

5. Considered the submission of learned counsel for the parties. Neither respondent No. 2 nor respondent No. 1 has considered the defence of the petitioners properly, specifically, with regard to the charges Nos. 4 and 5. Neither the statement of Entertainment Tax Inspectors were recorded nor his signature was got verified from the hand writing expert. Merely on the presumption order was passed. If subsequently it is found that neither the signature has been denied by the then Entertainment Tax Inspector nor there is opinion of expert that signature was forged then imposing the tax with allegations of tax evasion would be incorrect and baseless.

6. The statement of Entertainment Tax Inspector who inspected and verified "matinee show" that film "Zurasic Park" exhibited and shown, has also not been recorded. According to the petitioner no receipt was issued at the time of inspection after taking and seizing the record by the inspecting party, hence there was chances of manipulations. The appellate authority is required to pass the reasoned order, after affording opportunity of hearing to the petitioner.

7. In view of the fact, the impugned order dated April 3, 1997 passed by respondent No. 1 (annexure 9) is hereby quashed. Respondent No. 1 will consider the matter afresh as expeditiously as possible preferably within three months after furnishing certified copy of this order and will pass a reasoned order after affording opportunity to the petitioner in accordance with law. Accordingly the writ petition is hereby allowed. No order as to costs.