

(2002) 01 AHC CK 0021
In the Allahabad High Court
Case No : Writ Petition No. 289 of 2002 (MB)

National Talkies and Another	Vs	APPELLANT
District Magistrate/Licensing Authority and Others		RESPONDENT

Date of Decision : 16-01-2002

Acts Referred:

Uttar Pradesh Entertainments and Betting Tax Act, 1979 — Section 15(2), 15(3)

Citation : (2002) 2 AWC 1057

Hon'ble Judges : M.A. Khan, J; Ashish N. Trivedi, J

Bench : Division Bench

Advocate : S.K. Mehrotra and I.D. Shukla, for the Appellant; Rajiv Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Ashish N. Trivedi and M.A. Khan, JJ.—Heard Sri S. K. Mehrotra, learned counsel for the petitioners and Sri Rajiv Sharma, learned standing counsel for the State respondents.

2. By the impugned order dated 4.1.2002 the District Magistrate, Sultanpur in exercise of powers conferred under the proviso to subsection (2) of Section 15 of the U. P. Entertainments and Betting Tax Act, 1979 (hereinafter referred to as Act) ordered the suspension of the cinematograph licence of the petitioners and called upon them to show cause with regard to the allegations made in the order of suspension.

3. Sub-section (3) of Section 15 of the Act provides that any person aggrieved by an order revoking or suspending any permission or licence may, within 15 days from the date of communication of such order, prefer an appeal to the State Government in the manner prescribed and the order of the appellate authority shall be final.

4. Sri S. K. Mehrotra, learned counsel for the petitioners submitted that in the facts and circumstances of the case, the petitioners should not be relegated to

avail the alternative remedy of statutory appeal since the order dated 4.1.2002 suspending the petitioner's licence as an interim measure is wholly without jurisdiction and placed reliance on a Division Bench decision of this Court in *Deena Nath Gupta v. Commissioner of Entertainment Tax* 1995 (3) AWC 1459, and referred to paragraph 5 of the report, which is reproduced hereunder :

"5. Under the above proviso, the authority has the power to pass interim order of suspension only if it is of the opinion that the "object of the action proposed to be taken would be defeated by the delay." in the instant case, the Impugned order recites that unless the petitioners are stopped from exhibiting the films, they will continue to commit similar irregularities and will evade tax in future. These reasons do not satisfy the requirement of the proviso to Sub-section (2) of Section 15 of the Act. The probability of committing irregularities and evasion of tax in future is not a ground to suspend the licence by way of interim measure. The ground on which such an order can be passed is the formation of the opinion by the concerned authority to the effect that the object of the action proposed to be taken would be defeated by delay. No such reasons have been recorded in the order and what has, been stated does not relate to the condition under which an interim suspension can be passed. That apart, the question of committing irregularities and evasion of tax by the petitioners is yet to be decided and, therefore, no presumption can be drawn on the basis of the allegations contained in the show cause notice that the petitioners will commit such irregularities and will evade the tax."

It would thus be apparent that in *Deena Nath Gupta's* case there was an allegation of evasion of tax in future which this Court was of the opinion could not be a ground to suspend the licence as an interim measure.

The case is clearly distinguishable on facts.

5. In the present case, the allegations against the petitioners are that on the first day in the premier show of a cinematograph film titled as "Pitaah" on physical verification by the enforcement officers it was found that there were 162 persons in the balcony and 265 persons in the special class whereas on the relevant prescribed forms it was shown that there were 131 persons in the balcony and 227 persons in the special class and when the enforcement officers wanted to verify and check the tickets of those spectators who were found in a toilet but were prevented from doing so and certain anti-social elements were instigated against the officers and it was in these circumstances, that the District Magistrate was of the opinion that it was expedient that an urgent step should be taken and, therefore, by way of an interim measure petitioners' licence had been suspended so as to prevent the petitioners from future mischief.

6. We have refrained from adjudicating the merits of the order of suspension or the reasons therefore since we are of the opinion that in the facts and circumstances of the case, it is open for the petitioners to question the order of suspension in appeal before the State Government under Sub-section (3) of the

Section 15 of the Act, if the petitioners so desire.

7. In the event, the appeal is filed before the State Government u/s 15 (3) of the Act within two weeks from today, the appellate authority shall not reject the memorandum of appeal on the ground that it has been presented beyond the prescribed period of limitation but shall proceed to decide the appeal on merits and in accordance with law.

8. Subject to the above observations, the writ petition is dismissed.