

(1996) 01 AHC CK 0135

In the Allahabad High Court

Case No : C.M.W.P. No's. 1055 of 1988 and 278 of 1989

Niranjan Lal Bhargava and Co. and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-01-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Entertainments and Betting Tax Act, 1979 — Section 2(1), 25(2), 3, 6, 7

Uttar Pradesh Entertainments and Betting Tax Rules, 1981 — Rule 4

Citation : (1996) 01 AHC CK 0135

Hon'ble Judges : M.C. Agarwal, J

Bench : Single Bench

Advocate : R.S. Agarwal and Sudhir Chandra, for the Appellant;

Final Decision : Dismissed

Judgement

M.C. Agarwal, J.—These two petitions under Article 226 of the Constitution of India raise an identical issue. Petitioner No. 2 M/s. Sidhant Film Distributors (P) Ltd. is a common Petitioner in both the petitions and the Petitioners are represented by the same counsel. These petitions were, therefore, heard together and are disposed of by this common judgment.

2. For the sake of facility, I deal with Writ Petition No. 1055 of 1988 first. The Petitioner No. 1 owns a cinema house at Allahabad called Bishambhar Palace and is a cinema film exhibitor. Petitioner No. 2 is a cinema film distributor. Their case is that the Petitioner No. 2 had acquired the distribution rights of a cinematograph film titled "Shiva-Ka-Insaf" which was a three dimensional film so that it could conveniently and properly be viewed through special spectacles known as 3D spectacles. The Petitioner No. 2 supplied the said film to the Petitioner No. 1 for exhibition in "Bishambhar Palace". It also supplied 3D spectacles to be provided to the viewers. For providing the said spectacles to the viewers, the Respondent No. 2 set up a special counter in one of the verandahs

of the cinema house and a charge of Re. 1 was made from every viewer who desired to have a 3D spectacle. The charges for viewing the film were separately realised by the issue of appropriate ticket. The exhibition of the said film started from 12.4.1985. It is alleged that the taking of 3D spectacles from the Petitioner No. 2 was optional and the viewers were free to bring their own spectacles and the said spectacles were not supplied from the booking office along with the ticket but were supplied by Petitioner No. 2 from a special counter set up for the purpose. It is claimed that the sum of Re. 1 was not charged as a condition of admission to the entertainment but was realised as service charge for supplying the spectacles. The Respondents, however, took the view that the sum of Re. 1 was being charged as admission fee and entertainment tax thereon was also required to be paid @ 150 per cent, i.e., Rs. 1.50 per spectacle supplied. A show cause notice dated 13.5.1985 was issued and after considering the reply of Petitioner No. 1, the Collector, Allahabad made an order dated 16.6.1985 raising a demand of Rs. 1,22,428.30 paise which included a sum of Rs. 1,000 as penalty. This order was rectified by another order dated 19.6.1985 raising the demand to Rs. 1.31,527.90 paise including Rs. 1,000 as penalty.

3. The Petitioner No. 1 challenged the said orders by preferring an appeal to the State Government contending, inter alia, that, in any case, the viewer having paid a sum of Re. 1 for the spectacle, it has to be assumed that out of it forty paise were for admission to the entertainment and 60 paise, being 150 per cent of 40 paise, was the entertainment tax and thus the Petitioner could be subjected to an additional liability of 60 paise per viewer only as against Rs. 1.50 per viewer assessed by the Collector. The appeal was dismissed and the Petitioners have filed this petition.

4. At the hearing Sri Sudhir Chandra, learned senior advocate for the Petitioners was fair enough to concede that in view of the definition of "payment for admission" contained in Section 2 (1) of the U.P. Entertainment and Betting Tax Act, 1979, the contention that the sum of Re. 1 realised for supplying the spectacles was not "payment for admission" and was only a service charge is not tenable. Sub-clause (iii) of Section 2(1) includes in payment for admission "any payment made for loan or use of any instrument or contrivance which enables a person to get a normal or better view or hearing or enjoyment of the entertainment, which without the aid of such instrument or contrivance, such person would not get". That 3D spectacle was such an instrument is admitted in the petition itself.

5. The only point pressed on behalf of the Petitioners was that the one rupee that a viewer paid for the spectacle was not "admission fee" as contended by the Respondents but was a "payment for admission" as defined in Section 2(1) and, therefore, this one rupee is to be bifurcated into "admission fee" and "entertainment tax". The tax being 150 per cent of admission fee, the rupee should be shared between the exhibitor and the State in the ratio of 40 : 60. The learned Standing Counsel on the other hand contended that Rule 4 of the U.P.

Entertainment and Betting Tax Rules, 1981 (hereinafter referred to as "the Rules") requires that the ticket shall show the price of admission, the amount of entertainment tax and surcharge and the total amount payable, and that since the exhibitor did not bifurcate the rupee in this manner, the same would be treated as payment for admission on which tax @ 150 per cent has to be paid.

6. Section 3 of the Act is the charging section which levies tax on "all payments for admission to any entertainment". Section 6 provides that no person shall be admitted to any entertainment except with a ticket in the prescribed form denoting that the proper tax payable u/s 3 has been paid. Section 7 prohibits entry to admission without being in possession of a proper ticket as required u/s 6. These provisions make it clear that the ultimate payer of the tax is the viewer and he has to pay the entertainment tax before he enters an entertainment. Entry to an entertainment without payment of tax is punishable u/s 25(2) of the Act. Thus, when a viewer paid Re. 1 for the spectacle for entry to the entertainment, he would be deemed to have paid the entry fee as well as the tax meaning thereby that the rupee would have to be bifurcated as above.

Payment for admission", as already stated, has been defined in Section 2(1). Sub-clause (iv) thereof includes in the payment for admission "any payment, by whatever name called for any purpose whatsoever, connected with an entertainment, which a person is required to make in any form as a condition of attending or continuing to attend the entertainment, either in addition to the payment if any for admission to the entertainment or without any such payment for admission

(emphasis supplied).

This unequivocally shows that "payment for admission" is the total of the admission fee that goes to the exhibitor and the tax that goes to the State. There is an apparent contradiction in Section 3 and the definition of "payment for admission" in Section 2(1), because Section 3 levies tax as a percentage of "all payments for admission" which already includes the tax. Section 2(1) does not exclude from "payment for admission" the tax payable u/s 3. The Act and the Rules do not refer to anything as "admission fee". Rule 4 which deals with "form of ticket" speaks of price for admission and the form of ticket, i.e., Form A speaks of admission charge. None of the expressions has been defined but Section 6 read with Rule 4 and Form A does make it clear that when an exhibitor issues a ticket, he has to clearly indicate what is the exhibitor's own charge for admission and what amount is the State's charge for entertainment tax. If Section 3 is literally applied, then it would lead to absurd results. Take an example. An exhibitor charges Rs. 5 for admission. If this is the exhibitor's charge only, then according to literal interpretation of Section 3, there is no basis for calculation of tax which has to be calculated on "payment for admission" which, as shown above, has to include the tax as well. The tax leviable on Rs. 5 @ 150 per cent is Rs. 7.50. The "payment for admission" becomes Rs. 12.50. Then the tax should be calculated on Rs. 12.50. the tax so calculated would

again be added to arrive at the "payment for admission" and thus we have an unending exercise before us. The rules then come to rescue by clarifying that an exhibitor must indicate separately his own charge for admission and the tax and surcharge payable thereon and then the total sum that a viewer has to pay. The question is what happens when an exhibitor, for some reason or the other, fails to bifurcate the viewer's payment into the two spheres as mentioned above. Does it mean that the whole amount so realised (without bifurcation) from the viewer can be treated as admission charge, the viewer would be assumed to have entered the entertainment without payment of tax; and tax equal to 150 per cent thereof can be levied? In the present case, the exhibitor has realised rupee one from each viewer and the State wants it to pay Rs. 1.50 per viewer leaving it poorer by 50 paise each viewer. What is being charged is a tax and not a penalty. The ultimate payer is the viewer who has paid only Re. 1 to be shared between the exhibitor and the State. Here is a case of an additional charge of Re. 1. There may be a case where an exhibitor is admitting persons to an entertainment on payment of a lump sum without bifurcation as required by Rule 4 and Form A. Does it mean that such person shall pay as tax an amount which even the viewer would not have been required to pay if a proper ticket was issued to him in accordance with Rule 4, Form A, and thus leaving the exhibitor poorer by 50 per cent. We are a democratic welfare State and such a Shylockean interpretation of a fiscal statute is impermissible. The exhibitor has charged Re. 1 without specifying how much is his own charge and how much is the entertainment tax. Therefore, on a harmonious construction of the various provisions of the Act and the Rules, the only permissible course is to bifurcate it in a manner that the exhibitor's charge for admission and tax thereon @ 150 per cent make one rupee. In this manner, the exhibitor's admission charge comes to 40 paise on which only a sum of 60 paise is leviable as entertainment tax.

7. For the above reasons, to this extent the petition is liable to succeed. I may state again that no other plea was pressed before me. So far as Petitioner No. 2 is concerned, no assessment for demand has been made on it and, therefore, it had no cause of action for filing this petition.

Therefore, the Writ Petition No. 1055 of 1988 is dismissed as far as Petitioner No. 2 is concerned. It is allowed as far as Petitioner No. 1 is concerned and the assessment order dated 16.6.1985 as rectified by order dated 19.6.1985 (copies of which are Annexures 3 and 4 to the writ petition) and the appellate order dated 23.4.1988 are modified to the effect that the tax payable by Petitioner No. 1 would be calculated in the manner stated above. The Collector, Allahabad shall recalculate the tax payable by the Petitioner and after adjusting the amounts already paid, issue a demand notice or refund order, as the case may be. In case any amount is found refundable to the Petitioner, it will be permissible to the Collector to order its adjustment against future dues. Parties will bear their own costs.

Writ Petition No. 278 of 1989.

8. In this petition, the Petitioner No. 1 M/s Eve's Picture House, Meerut, exhibited the aforesaid film in a similar manner. In this case, the Collector, Meerut raised a demand of Rs. 2.08,324 by letter dated 23.5.1985. The Petitioner Initially challenged the same by filing a civil suit, but later on coming to know that in Writ Petition No. 302 of 1985 in the case of M/s Niranjana Lal Bhargava and Company this Court had held that an appeal lies to the State Government in such matters, the Petitioner filed an appeal before the Special Secretary, Institutional Finance which has been dismissed as barred by time. It is claimed that the delay in filing the appeal was because of incorrect legal advice and the delay should have been condoned. The Petitioner challenges the order dismissing the appeal and prays for a mandamus directing the State Government to condone the delay and decide the appeal on merits. There is also a prayer that any other writ or order or direction as this Court may deem fit be made.

9. The controversy is limited to the amount of entertainment tax leviable in relation to the realisation by the Petitioner @ Re. 1 per viewer for the 3D spectacles provided to the viewers for seeing the film. This has been decided by me in the connected writ petition by the order recorded above. Neither delay nor the existence of an alternative remedy is an absolute bar to the exercise of jurisdiction under Article 226 of the Constitution of India. In the circumstances of the case, the Collector's order raising a demand @ Rs. 1.50 for realising Re. 1 is unjustified and illegal. In view of the decision arrived at, it would not be proper to refer the matter back to the State Government for disposal of the appeal.

10. The writ petition of Petitioner No. 1 is accordingly, allowed. The order dated 23.5.1985 (copy of which is Annexure 8 to the writ petition) passed by the Collector, Meerut is modified to the effect that the tax payable by Petitioner No. 1 would be calculated in the manner stated in the judgment of this Court in Writ Petition No. 1055 of 1988. The Collector, Meerut shall recalculate the tax payable by the Petitioner and after adjusting the amounts already paid issue a demand notice or refund order as the case may be. In case any amount is found refundable to the Petitioner, it will be permissible to the Collector to order its adjustment against future dues.

11. The petition of Petitioner No. 2 is dismissed. Parties will bear their own costs.