(1997) 02 MP CK 0024

In the Madhya Pradesh High Court

Case No : Writ Petition No. 5020 of 1996

Phoolchand Surana APPELLANT

Vs

State of M.P. and Another RESPONDENT

Date of Decision : 07-02-1997

Acts Referred:

Madhya Pradesh Entertainments Duty and Advertisements Tax Act, 1936 — Section 3

Citation : AIR 1997 MP 254 : (1997) ILR (MP) 57 : (1999) 2 MPJR 60

Hon'ble Judges : Ramesh Surajmal Garg, J

Bench : Single Bench

Advocate : Manisha Gupta, for the Appellant; V. Shukla, G.A., for the Respondent

Final Decision : Allowed

Judgement

R.S. Garg, J.

By this petition under Article 226 of the Constitution of India, the petitioner seeks the relief that the respondents be directed to issue necessary permission for starting the cinema.

Brief facts, as stated by the petitioner in support of the petition, are that the petitioner is sole owner of Ratan Talkies, Bemetara, District-Durg. It was constructed in the year 1984. The said talkies was run by the petitioner from 1984 to 12-2-1990 thereafter, according to the petitioner, he stopped exhibiting the films in the said cinema theatre and as alleged by him let out the hall and furniture on 12-5-1990 to Subhash Chandra Surana to run a video parlour for a monthly rent of Rs. 4,000/- (Four Thousand). The said Subhash Chandra Surana was granted a licence to run the Video parlour and in the said licence (Annexure P/2) it was clearly mentioned that the present petitioner is the owner of the building. The petitioner had nothing to do with the business of Subhash Chandra Surana. The said Subhash Chandra exhibited the films in the said Video parlour up to August, 1995 and thereafter stopped the business and handed over the building and furniture to the petitioner. The petitioner thereafter carried out extensive repairs so that he could re-start the cinema theatre. On 25-6-1996, the petitioner applied to the Collector for grant of licence. Collector, Durg required the petitioner to complete certain formalities which were accordingly completed. The Collector thereafter required the petitioner to approach Chief Nagar Panchayat Officer for grant of licence. The said Chief Nagar Panchayat Officer issued the lincence in favour of the petitioner on 23-11-1996. The petitioner, vide his application dated 23-11-1996 enquired from the Excise Officer, Durg regarding deposit of security. The District Excise Officer withheld the permission on the ground that the petitioner was required to deposit the arrears of entertainment tax due on video business of Subhash Chandra Surana. He petitioner submitted to the District Excise Officer that he was not connected with the business and if there were any dues the same were required to be recovered from Subhash Chandra Sufana, he submitted that the permission could not be withheld on this ground. The District Excise Officer then issued demand notice against Subhash Chandra Surana for the said amount. The petitioner submits that as he was not engaged in me business of film exhibition under a video parlour licence, no recovery could be made from him nor the permission could be withheld on the ground of dues against Subhash Chandra Surana.

The respondent No. 2. District Excise Officer, in his return contends that the intention of the petitioner is to evade the payment of video entertainment tax. The petitioner had given his consent in favour of the son Subhash Chandra Surana that he wanted to close down the cinema business. It is further submitted that the licence case of petitioner''s talkies was closed and a licence was granted in favour of the son. The respondents contend that the entertainment duty which is recoverable from the petitioner and/or his son is leviable under the provisions of M.P. Entertainment Duty and Advertisements Tax Act, 1936. The respondents contend that the proprietor and/or incharge of the management is liable to pay the duty u/s 3 of the Act. The respondent submit that the petitioner was infact falling within the definition of ''proprietor'' and as such the recovery could be made from him and in view of lapses on the part of the petitioner, the permission could be withheld. The respondents submit that the petitioner is not entitled to a no dues certificate and he cannot be permitted to exhibit the films unless the dues are cleared. The respondents also submit that the documents filed by them would show that Subhash Chadra, son of the petitioner, was acting as a proprietor or at least as an incharge of the management for the petitioner, therefore, for the son''s business, the father is liable. They further submit that the petition is misconceived and is liable to be rejected with costs.

Smt. Manisha Gupta, learned counsel for the petitioner submits that the recovery against the petitioner is not maintainable and withholding of the permission and/or no dues certificate by the respondent No. 2 is contrary to law. She submits that the petitioner does not fall within the sweep of the word ''proprietor'' as defined under the Act, nor he was incharge of the management. She submits that Section 3 which is the charging section casts a duty on the proprietor and unless it is proved and established that petitioner was a proprietor, neither the recovery could be made nor the licence could be withheld.

On the other hand, Shri Shukla, learned Govt. Advocate contended that from the facts it would be apparent that the father and the son have invented the device so that they are not required to pay the entertainment duty. He submits that the documents on record would show that when the father had the licence, the son was managing the show and when the son was in the business, the father was really working as an incharge of the management. He submits that the petition deserves to be dismissed.

Section 3 of the Act provides that every proprietor of an entertainment by V. C. R. held in the town with population mentioned in the column (1) of the table and on such screen size as mentioned in the table, shall pay to the State Govt. monthly duly at the rate specified in column (2) and (3) of the table. From the language of the Act, it is clear that it is the proprietor who is required to pay the entertainment duty.

According to Section 2(0. "proprietor", in relation to any entertainment, includes any person responsible for or for the time being incharge of the management thereof. From the definition, it is clear that the proprietor in relation to any entertainment includes any person responsible for the management and also includes any person who is for the time being incharge of the management. Section 2(b) defines ''entertainment'' which includes any exhibition, performance, amusement, game or sport to which persons arc admitted for payment.

Before a person is held liable for payment of the duty, it must be shown by the Department that he is a proprietor in relation to any entertainment. In the instant case, the petitioner has filed Ex. P/2 in support of his contention to prove that the licence for exhibition of film by videocassette recorder issued under Rule 10 was issued for and in name of Subhash Chandra Surana. The petitioner has also submitted his application to show that the earlier licence No. 30/84 was used for exhibition of the films with effect from 22nd October, 1984 to 12-2-1990. The respondents, in support of their contention have mainly relied upon the application dated 8-11-1989, filed by the petitioner in favour of Subhash Chandra that if video licence is granted in favour of Subhash Chandra, then he has no objection if his cinema licence is cancelled. From the Annexure R-2(b), it appears that cinema licence of the petitioner was cancelled by the order of the District Magistrate dated 30-12-1989. Annexure R-2 (c) which contains as many as five documents show that when the petitioner was exploiting his cinema licence, Subhash Chandra was infact the incharge of the management of the entertainment. Though it appears that when the petitioner was exploiting the cinema licence his son was incharge of the management of the entertainment, but it would not be correct to say that after 1990, the father, that is the petitioner, was incharge of the management of the son''s video parlour. The facts as submitted before this Court would only show that the petitioner was exploiting his cinema licence up to 30-12-1989 and with the assistance of his son was managing the affairs. If there were any recoveries against the petitioner, the son who was incharge of the management of the entertainment for the time being certainly could be held liable u/s 3 to pay the entertainment duty, but unless the department shows that after 1990 when the son was engaged in video exhibition of the films, the father was incharge of the management for the time being, no recovery can be made against the father. The presumption raised by the department, Specially the respondent No. 2, that the father and son are jointly running the business is far fetched. The son''s business is independent from the father''s business. The respondents are required to show that the father was connected with the business or was incharge of the management for the time being. Unless the positive evidence is brought on record, no recovery can be made against the petitioner. It is trite law that the State is not entitled to coerce any person to pay the tax or duty which he is not liable to pay or what is not recoverable from him. The action of the respondents in withholding the permission or granting no-objection certificate to the petitioner certainly is a coercion so that the entertainment duly is recovered either from the son or from the father under the threat of closure of the business. The respondent No. 2 under the law is duty bound to consider the application of the petitioner and do the needful in accordance with law. The law is for serving the justice and it cannot be used as a weapon for being influenced by the recovery proposed againmaking illegal recoveries.

It is held that the petitioner is not liable to pay the amount of the entertainment duty due against Subhash Chandra Surana; the action of the respondents in proposing the recovery against the petitioner is illegal and it is lastly declared that the respondent No. 2 is bound to consider the application of the petitioner in accordance with law, without st Subhashchandra Surana.

The petition deserves to and is accordingly allowed. There shall be no order as to costs.

