

(1994) 04 AHC CK 0049

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 834 of 1993

Pradeep Agarwal and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 12-04-1994

Acts Referred:

Uttar Pradesh Entertainment and Betting Tax (Amendment) Act, 1989 — Section 2
Uttar Pradesh Entertainments and Betting Tax Act, 1979 — Section 15(1), 3(1), 38
Uttar Pradesh Entertainments and Betting Tax Rules, 1981 — Rule 124A, 24A,
24A(1), 24A(2), 24A(21)

Citation : AIR 1994 All 344 : (1994) 2 AWC 1162

Hon'ble Judges : Om Prakash, J;M.C. Agarwal, J

Bench : Division Bench

Advocate : A. Kumar, for the Appellant;

Final Decision : Allowed

Judgement

Om Prakash, J.—This bunch of six writ petitions raises a common question for consideration whether to take benefit of the compounded payment within the meaning of the proviso to sub-section (1) of Section 3 of the U.P- Entertainment and Betting Tax Act, 1979 (briefly, "the Act") it is necessary for the petitioners to declare four shows or the number of shows which the petitioners or some of them had organised as on 1-5-1989.

2. All these petitions were heard together. As counter-affidavit was filed only in Writ Petition No. 834 of 1993, that was not sent for and was heard with the consent of the parties along with other writ petitions, which were already listed. The Counsel for the parties have agreed that the question being common in all these writ petitions, the counter-affi- davit filed in Writ Petition No. 834 of 1993 be read to decide all the writ petitions.

3. No purpose will be served by reproducing the facts of each and every writ petition but it will suffice if the facts of only Writ Petition No. 34 of 1993, in which counter-affidavit has been filed, are reproduced. The Writ Petition No. 834 of

1993 is, therefore, treated to be the leading writ petition and reference hereinafter will be made only with regard to the paper book of this writ petition,

4. It is not disputed that all the petitioners herein have taken up the benefit of the grant-in-aid scheme, according to which the cinema owners, who constructed their cinemas in a local area having a population not exceeding One lac, are entitled to full exemption of tax in the first and second year. The tax benefit was tapered in the next following three years; in the third year the tax benefit was limited to 75% and in the fourth and fifth year it was reduced to 50%. The grant-in-aid scheme was devised to encourage the public to construct more and more cinemas in the rural areas.

5. Section 3 of the Act is a charging section. Sub-section (1) of Section 3 falling in Chapter II states that there shall be levied and paid on all payments for admission to any entertainment, an entertainment tax at such rate not exceeding 150% of each such payment as the State Government may from time to time notify in this behalf unless compounded payment is made. Proviso to subsection (1) of Section 3, which is germane for these writ petitions, is reproduced below:

"Provided that a proprietor of a cinema in a local area having a population not exceeding one lac, may, in lieu of payment under this sub-section, pay a compounded payment to the State Government on such conditions and in such manner as may be prescribed and at such rate not exceeding forty per cent of the gross collection capacity, as the State Government may from time to time notify, and different rates of compounded payments may be notified for different categories of local areas."

By Section 2 of the Uttar Pradesh Entertainment and Betting Tax (Amendment) Act, 1990, proviso to sub-section(1)of Section 3 of the Principal Act was amended in that the words "not exceeding forty per cent of the gross collection capacity" and the Explanation to the said proviso were omitted. From the proviso to sub-section (1) of Section 3, which was inserted by the Amending Act" of 1989, it is manifest that the cinema owners having cinemas in a local area having a population not exceeding one lac, who have taken the benefit of grant-in-aid scheme, also became entitled to opt for compounded payment. When the proviso was inserted, Rules 24A, 24B and 24C in the Uttar Pradesh Entertainments and Betting Tax Rules, 1981 (for short, "the Rules") were also inserted with effect from 1-5-1989.

6. Rule 24A(1) of the Rules sets out the manner in which option for compounded payment of tax is to be exercised. To understand the modalities of the compounded payment of tax, it is apposite to reproduce Rule 24A which is as under:

"24-A. Compounded payment of Tax.--(1) The proprietor of a cinema opting to make compounded payment of entertainment tax under the proviso to sub-section (1) of Section 3 of the Act shall submit his written option in duplicate to the district Magistrate before the last date fixed by the Commissioner in this

behalf in Form "R" appended to these rules declaring the total number of shows to be exhibited in a day, number of seats in the cinema class wise and rates of tickets at full price and on reduced price, if any,

(2) The option once exercised shall be valid for the period of a financial year.

(3) The District Magistrate shall, within a week of the receipt of the application communicate to the proprietor the gross collection capacity and weekly tax payable, by the cinema in Form "S".

(4) The proprietor shall strictly adhere to the declaration under sub-rule (1) and shall obtain permission of District Magistrate before effecting of change in the number of seats, the ticket rate and the number of shows.

(5) The proprietor of a cinema opting for compounded payment of tax shall inform the District Magistrate at least three days in advance if he proposes to hold any show at reduced price of ticket. The District Magistrate shall cause all such shows to be inspected and rates verified."

7. Later, sub-rule (3) and sub-rule (4) of Rule 24A were amended by the U.P. Enter-tainments and Betting Tax (sixth Amendment) Rules, 1989. Sub-rule (3) was split up and was amended as follows:

"3(i) The District Magistrate shall within a week of the receipt of the application communicate to the proprietor the gross collection capacity and the weekly tax payable by the cinema in Form "S".

(ii) For the purpose of calculation the gross collection capacity the District Magistrate shall take into account the maximum permissible number of seats mentioned in the licence and where the maximum number is increased by amendment allowed by the Licensing Authority, the increased number."

Sub-rule (4) was substituted as follows:

"(4) The proprietor shall strictly adhere to the declaration under sub-rule (1) and shall obtain permission of District Magistrate before effecting any change in the number of seats the ticket rate and number of shows. The licensing authority shall have the power to revise the compounded amount of tax upwards, if the gross collection capacity increases as a result of such permitted change."

8. It is not disputed that the petitioners are entitled to opt for compounded payment of tax. The petitioners exercised option for the years ranging from 1992-93 onwards. Their applications exercising option for the said years have been rejected on the ground that they have given declaration stating lesser shows than those they declared for getting the benefit, of grant-in-aid scheme. Annexures "10" to , "13" of the writ petition dated 13-4-1993, the Additional District Magistrate, Allahabad, communicated the petitioners that the District Magistrate by order dated 16-2-1993 had rejected the applications of the petitioners exercising option for compounded payment of tax and that they could take benefit of the compounded payment of tax only if they declared the shows

which they carried on as on 1-5-1989 for taking the benefit of the grant-in-aid scheme.

9. Aggrieved of the aforesaid communications, the petitioners have come up to this Court for quashing the said communications and the orders dated 16-2-1993 passed by the District Magistrate, Allahabad, in the case of the petitioners rejecting their applications exercising option for the compounded payment of tax and for issuing a writ of mandamus directing the respondents to accept the option of the petitioners for compounded payment of tax.

10. The question for consideration is whether the District Magistrate rightly rejected the applications of the petitioners exercising option for compounded payment of tax by orders dated 16-2-1993. Sub-rule(1) of Rule 24 A clearly states that the proprietor of a cinema opting to make compounded payment of entertainment tax under the proviso to sub-section (1) of Section 3 of the Act shall submit his written option to the District Magistrate in Form "R" appended to the rules declaring the total number of shows to be exhibited in a day, number of seats in the cinema class wise and the rates of tickets. Sub-rule (1) does not require a cinema owner to declare the shows which he carried on when he availed exemption by virtue of grant-in-aid scheme.

11. In paragraph 3(a) of the counter-affidavit filed for respondents, it is stated that while taking exemption under the grant-in-aid scheme, the petitioners disclosed maximum number of shows, but while exercising option for compounded payment of tax they have reduced the number of shows to 2 or 3 not adhering to the number of shows which were carried on by them as on 1-5-1989. It is, further, stated that 1-5-1989 is "base line" for deciding the compounded tax. In paragraph 6 of the counter-affidavit it is averred "that the department has directed that number of shows and rates prevalent on 1-5-1989 will be taken into consideration for giving benefit of compounded tax scheme. Since the petitioners have not complied with the aforesaid direction given by the department, as such, their applications were rejected after seeking direction from the Head Quarter." In paragraph 9 of the counter-affidavit, the respondents reiterate that "the petitioners were also getting the benefits of grant-in-aid scheme and they were organising four shows and getting considerable rebate of entertainment tax from the Government and when in due course of time the aforesaid scheme of grant-in-aid came to an end, they prefer to organise only 2/3 shows and opted for payment of tax under the compounded scheme. This has been done by the petitioner only with a view to get more profit and to put irreparable loss to the State Government, as such, the petitioners cannot be allowed to make payment under the compounded system.....The petitioners cannot reduce the number of shows in order to get the benefit of compounded payment of tax scheme." In paragraph 10 of the counter-affidavit, it is averred that "the petitioners have no right to reduce number of shows as the same is against the spirit of provisions of Act and Rules".

12. These paragraphs of the counter-affidavit fully unfold the case of the

respondent. The question for consideration is as to how 1-5-1989 has been made a cut off date for the purpose of stating the number of shows in the declaration, required to be made under sub-rule (1) of Rule 24A. No doubt, Rules 24A, 24B and 24C were inserted in the Rules with effect from 1-5-1989, but Rule 24A, which enjoins upon a cinema owner to make a declaration as to the number of shows to be exhibited in a day in connection with the written option, does not direct that a cinema owner has to declare the number of shows which he organised either as on 1-5-1989 or for the purpose of taking benefit of the grant-in-aid scheme. Rule 24A (1) in simple terms, requires a proprietor of a cinema option to make a compounded payment of entertainment tax under the proviso to sub-section (1) of Section 3 of the Act to submit his written option in duplicate to the District Magistrate before the last date fixed by the Commissioner in that behalf in form "R" declaring the total number of shows to be exhibited in a day. Sub-rule (1) of Rule 24. A does not compel a cinema owner to declare maximum number of shows permissible by the Rules or by the administration, nor does it require that total number of shows for the purpose of declaration would be that which a cinema owner organised while taking advantage of the grant-in-aid scheme. What is not provided by the statutory Rules, the respondents cannot compel the petitioners to do that. The Rules of 1981 have been framed by the State Government in exercise of the powers conferred by Section 38 of the Act. The Rules being statutory in nature, unless amended, have to be read as they stand. Sub-rule (21) of Rule 24 A has not yet been amended and, therefore, the respondents cannot be permitted to bring in foreign words in sub-rule (1) of Rule 24A. It is trite that so long as the language of a provision is unambiguous, then that should be interpreted on the basis of its plain and clear language without adding foreign words and subtracting any words therefrom. Reading sub-rule (1) of Rule 24A in that fashion, it has to be held that sub-rule (1) of Rule 24A does not place any restriction on number of shows, which a proprietor of a cinema may declare while submitting his written option to the District Magistrate in connection with the compounded payment of tax. There is no justification to read Rule 24A (1) in the manner as suggested by the standing Counsel for respondents. The petitioners may have organised four shows or more for taking advantage of the grant-in-aid scheme, but sub-rule (1) of Rule 24 A does not enjoin upon them to declare the same number of shows which they organised during the period when they availed grant-in-aid scheme. A cinema owner is free to declare any number of shows which he intends to exhibit in a day for the purpose of compounded tax. However, option once exercised, shall be valid for the period of a financial year under sub-rule (2) of Rule 24A. Sub-rule (4) mandates that the proprietor shall strictly adhere to the declaration under sub-rule (1) and shall obtain permission of District Magistrate before effecting any change in the number of seats, the ticket rate and the number of shows. So a declaration may be made stating any number of shows to be exhibited in a day, but once it is made, the proprietor of a cinema has to adhere to that and if he wants to effect any change in the number of shows, then prior permission of the District Magistrate shall be obtained, meaning thereby that declaration will not be

changed without the permission of the District Magistrate. Section 15(1), cl. (f) the Act states that the District Magistrate or the Commissioner may, by order, revoke or suspend by way of punishment any permission or licence granted for an entertainment under any other law for the time being in force, if he is satisfied that the proprietor has contravened any provision of the Act or the Rules made thereunder or any order or direction issued under any such provision. The petitioners, if they fail to adhere to the declarations made by them, may be exposed to the risk of punishment, but cannot be compelled to adhere to the number of shows which they organised during the period of the grant-in-aid. Though averred in paragraph 10 of the counter-affidavit that reduction in number of shows is contrary to the provisions of the Act and Rules, but no such provision has been pointed out by the Standing Counsel to us in this behalf. If the contention of the respondents that in the case of the proprietor of a cinema, the number of shows which he exhibited in a day while taking advantage of grant-in-aid scheme and which he declares in connection with the option for compounded tax, should telescope into each other, is accepted, then sub-rule (4) permitting change in the number of shows, of course subject to permission of the District Magistrate, will be rendered nugatory in that he cannot change the number of shows. There is nothing to indicate that right to effect the change in the number of shows as envisaged by sub-rule (4) is taken away, if the proprietor of the cinema availed the grant-in-aid scheme at some point of time.

13. Taking the semantic view of the Rules and the Act, we are of the considered view that the declaration of number of shows under sub-rule (1) of Rule 24A cannot be restricted to the number of shows which the petitioners organised while they availed the grant-in-aid scheme. The cut off date, viz., 1-5-1989, as set up in paragraph 3 and other paragraphs of the counter-affidavit is imaginary, arbitrary and contrary to the provisions of the Rules and the Act.

14. The orders of the District Magistrate passed on 16-2-1993 rejecting the applications of the petitioners exercising option for compounded payment of tax are, therefore, illegal and deserves to be quashed. Similar is the position of the orders passed by the District Magistrate in the case of remaining petitioners. The concerned District Magistrates have to take decision on the options submitted by the petitioners considering the number of shows which they have declared without being inhibited by the fact that the petitioners have varied the number of shows while giving declaration in connection with the options, exercised by them.

15. In the result, all the petitions succeed and are allowed. The orders of the District Magistrate dated 16-2-1993 passed in the cases of some petitioners and similar orders passed by him in the cases of other petitioners and also the communications sent by the Additional District Magistrate of all such orders are hereby quashed and the respondents are directed to take decision afresh on the options of the petitioners as they stand, taking into consideration the number of shows which they have declared, within a week from the date and certified copy of this order is produced before him by the petitioners.

16. Petitions allowed.