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In the Calcutta High Court

Case No : AOD No. 2076 of 1991

Rabindra Nath Sadhukhan and Another — APPELLANT

Vs

State of West Bengal and Others — RESPONDENT

Date of Decision : 09-07-1993

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g), 226

Citation : 97 CWN 1112

Hon'ble Judges : Shyamal K. Sen, J;Ajit K. Sengupta, J

Bench : Division Bench

Advocate : L.K. Gupta, S. Sarkar and Sudipa Ray, for the Appellant;Sankar Mukherjee, for the Respondent

Final Decision : Allowed

Judgement

Ajit Kumar Sengupta, J.—The appeal arises out of judgment and order of a learned trial Judge, dated February 18, 1991 passed in Civil Rule No. 14599(W) of 1979. The appealants in the writ petition under Article 226 of the Constitution of India prayed for a writ in the nature of Mandamus commanding the State of West Bengal and the other respondents to enforce and give effect to the Provisions of the West Bengal Cinemas Development Scheme, 1976 and to act in terms thereof and further to grant incentive to the Cinema house of the petitioners in accordance with the said Provision. The learned single Judge by the judgment and order under appeal dismissed the writ petition. The facts leading to the petitioners grievance are that the petitioners carried on the business of exhibition of Cinema photographic films at the "Rajendra Cinema" in the village of Lawhati within the jurisdiction of the Rajarhar Police Station in the District of North 24-Parganas. The Rajendra Cinema was temporary in nature not having any permanent structure. This Government of West Bengal introduced a Scheme known as the West Bengal Cinemas Development Scheme 1976 to encourage the growth of new Cinema as well as films production industry in the State and the said Scheme came into force with effect from 1st April, 1976. The petitioners had applied for permission for permanent construction in May 1972 but did not possess resources to go ahead with the construction. Spurred by the incentive scheme introduced by the State Government the petitioners renewed the move for erecting a permanent structure. The District Magistrate, Respondent No. 3, granted permission by an order dated 29th March, 1977 for such construction.

2. Paragraph 4 of the said Scheme provides for some incentives and one such is the granting of subsidy to the owner of every "eligible cinema house" to the extent indicated therein. It is the condition of the grant that the owner of the ''eligible cinema house must execute a written agreement with the State Government in terms of the Scheme. The expression ''Eligible Cinema Hall'' is defined in the Scheme to mean a permanent cinema house with valid licence under rule 6 of the West Bengal Cinemas (Regulation of Public Exhibition) Rules, 1956.

3. The petitioners pursuant to the grant of the permission on 29th March, 1977 as aforesaid, completed the construction work for a permanent cinema hall and applied for grant of licence under the said rules of 1956. The exhibition of films also commenced on and from 12th September 1979. On 7th June, 1978 while the construction of the cinema house was in progress, the petitioners wrote to the District Magistrate for necessary instruction and particulars regarding the registration of the cinema house under the said Scheme to avail of the facility of the subsidy. The said representation reached the Finance Department of the State Government. The petitioners again wrote to the District Magistrate on 12th May, 1979 which was followed by another letter dated 16th October, 1979. Finally, a letter was addressed to the Secretary and the Deputy Secretary of the Finance Department, Nonetheless, the petitioners received no reply. From a notification the petitioners came to know on 6th November, 1979 that the Commissioner of Commercial Taxes, Respondent No. 2, has been appointed the Administrator under the said Scheme. The petitioners also came across a booklet published by the State Government containing information about the Scheme. By notification dated 21st May, 1976 it was stated that the Administrator for the said Scheme would be notified by the Information and Public Relations Department. Therefore, the petitioners wrote to the said Department on November 6, 1979 for information. The petitioners also made an application for registration of their cinema house in Form No. 1 before the State Govt. for obtaining registration certificate in Form No. II but there was not response forthcoming from any of the authorities. The petitioners, however, went ahead with the construction of the cinema house in the faith of receiving the incentives under the Scheme. The petitioners for the purpose obtained loan but the petitioners on account of then neglect or disinclination on the part of the respondent State Govt. authorities to perform the statutory duties under the said Scheme formulated by the State Govt. was compelled to move the writ application pleading there in that such neglect to perform or non-performance of statutory duty has the effect of violation of Articles 19(1) (g) of the Constitution of India.

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4. Before the learned Judge of the First Court the respondents took the stand that there application for construction of appermanent structure to house the cinema hall was made on May 29, 1972. Therefore, the petitioners case could not come under the Development Scheme 1976 nor under Rule 4 (1) of West Bengal Cinemas (Regulation of Public Exhibition) Rules 1976. A person desirous of building a cinema house may apply to the Districts magistrate with full particulars for approval of the proposed site and plan of the building but the petitioners did not submit the building plan. Therefore, the District Magistrate even while approving the site by a letter dated March 15, 1975 was stuck up as there was no building plan before him to complete the approval. He specifically called for the building plan from the petitioners. The building plan was received by him as late as March 29, 1977, whereupon the District Magistrate by a letter dated March 29, 1977 signified his permission to complete the construction. Thus, according to the respondents, the facts of the case take the cinema hall of the petitioners out of the scope of the definition of "eligible cinema" because an "eligible cinema house" under the Scheme was required to sub an it half yearly statement in From No. III with particulars duly certified by the certifying authorities and further required to enter into an agreement with the State Govt. After the agreement the owner of the eligible cinema house was required to submit every six months to the Administrator in From No. IV the requisite particulars for the grant of incentive. According to respondents, these requirements were not satisfied by the petitioner, to be entitled to the benefit of the Scheme. It is the further contention of the respondents that entitlement to the benefits of the Scheme requires the cinema halls to reserve a percentage from its aggregate show time per year for exhibition of "eligible films". The expression "eligible films" refers to any feature recognised as such by an order of the State Govt. (a) which has been shot more than 50% of its length in a studio or any outdoor locations in West sic or (b) the original version of which has been produced in West Bengal in Bengali or Nepali language. The main thrust of the respondents case before the Court below was that the petitioners cinema hall is not an eligible one nor did the petitioners as the owners of the hall abide by the conditions prescribed for availing the benefit of the Scheme. The applications made were also not in proper form and made before wrong authorities. The petitioners also omitted to submit the six monthly statements.

5. The facts as set out by the learned Judge are not in dispute. The entire controversy now turns on whether having regard to the surrounding facts and circumstances the petitioners case could fall within the scope and ambit of the said Scheme. The learned counsel appearing for the appellants submitted that the incentive provided by clause (iv) of the Scheme is that the State Govt. shall grant subsidy to the owner of every "eligible cinema house" equal to the aggregate amount of show tax and entertainment tax paid under the Bengal Amusement Tax Act 1922 by he owners of the eligible cinema house during a period of three years from he date of commencement of the exhibition of films in the house. It is the case of the appellants that the permanent licence in the

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appellants case was obtained on 10th September 1979 and the business of exhibiting films also commenced on and from 12.9.79. The appellants were well aware of the benefits of the Scheme and therefore by a letter dated June 7, 1978 asked for necessary particulars from the Dist. Magistrate, Respondent No. 3. for registration of the said cinema house under the Scheme so that the subsidy could be availed of. The appellants, as has been narrated in the foregoing, approached repeatedly the various authorities for registration of their cinema hall under the Scheme. It was particularly highlighted that on November 6, 1979 the appellants requested the Secretary, Information and Public Relations Dept., Govt. of West Bengal, to disclose the address of the Administrator with whom the cinema house was to be registered under the Scheme but the respondents consistently refrained from enlightening the appellant about the paraphernalia for such registration. The information was deliberately withheld.

6. As regards the contention of the respondents that the appellants cinema house is not an eligible cinema hall, the learned counsel submitted that the whole approach is negative and inconsistent with the object of the Scheme. According to him the Scheme mentions that the same takes effect from April 1. 1976 and its duration is for 5 years. Therefore, the Scheme was normally to expire on 31.3.81. By a resolution dated 28.5.80. however the Scheme was rescinded with effect from 5.5.2980, i.e. almost about 11 months earlier than the original deadline. The incentive provided by the Scheme under its clause (iv) is by way of refund of tax three years from the date of commencement of the exhibition of films. So once the cinema house is found to be eligible at any point of time when the Scheme is in operation the benefits thereunder shall continue for three years. For example if a cinema is found to be eligible on 4.5.80 it would sic itself of the incentive up to 4.5.83. Thus the incentive period can and in many cases did not over reach the life of the Scheme.

7. It is further contention of the respondents that the Scheme having outlived its term on 5.5.80 there was no question of we appellants being entitled to the incentive because the Scheme itself is no more alive. This is a fallacious contention and inconsistent with the terms of the Scheme as explained in the immediate preceding paragraph.

8. It is next contended on behalf of the appellants that rescission of the Scheme does not and cannot obliterate the obligation of the authorities to extend the benefits which have already accrued.

9. For this purpose reference was made by the learned counsel to the decision of the Supreme Court in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, In this case the Supreme Court has decided that the doctrine of promissory estoppels binds not only the private persons but the public bodies as well. Therefore, in the instant case, the State Govt. cannot be allowed to deny the appellants the benefit of the Scheme as is legitimately due to them by simply saying that the Scheme has been rescinded. The petitioners were actually induced to revive their plan for construction of the cinema house as a

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permanent structure only in the faith of promise as held out by the Scheme of granting the said incentive. It was the Scheme which spurred the petitioners into the activity of construction which would have other wise remained abandoned for lack of stable finance. It is the promise of subsidy that emboldened the petitioners to undertake the hazard of borrowing finances for the construction of the permanent house.

10. The appellants also contested the finding of the learned Judge that the appellants failed to take steps for construction of permanent structure in accordance with the Scheme. It is submitted that the finding overlooks that though the application for permission for permanent structure was made in 1972, the project was not pursued by the appellants and no construction work was at all started and the plan was indeed abandoned. But for the encouragement by the Scheme there would not have been revival of the project. It is further submitted that the appellants got the Scheme through the BDO, Rajarhat who forwarded a copy thereof to the appellants. The appellants then took steps and also submitted a building plan and obtained the permission for the construction as aforesaid. The construction was carried out by incurring loans. The appellants have controverter the finding of the learned Judge that the Block Development Officer, Rajarhat had forwarded no copy of the Scheme. It was pointed out that Block Development Officer by his memo No. 1235 (4) RRHT dt. 21.8.76 forwarded the said Scheme as is evident from page 92 of the paper book.

11. In the submissions made by the learned Counsel for the Respondents it has not been contested -

i) That the appellants have been carrying on the business of film exhibition in a temporary structure.

ii)a copy of the Scheme was forwarded to the appellants by the Block Development Officer, Rajarhat sometime in August, 1976 as claimed by the appellants.

iii) that the appellants had applied for permission for permanent construction in May 1972 but could not implement for constraints of finances.

iv) that the District Magistrate, Respondent No. 3 granted permission by an order dated March 29, 1977 for construction of a permanent house

v)that the District Magistrate, Respondent No. 3 granted permission by an order dated March 29, 1977 for construction of a permanent house.

12. The respondents have founded their case against the appellants on the following factors:

The appellants failed to comply with the requirements of the Scheme which were as follows :

i) The execution of a written agreement with the State Government in terms of the Scheme undertaking therein to reserve a filed percentage of aggregate show

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time of a year to exhibition of eligible films.

ii) Possession of licence under the West Bengal Cinemas (Regulation of Public Exhibition) Rules, 1956.

iii) Registration as an eligible Cinema Hall;

iv) Submission of required particulars for the grant of incentive every 6 months to the Administrator in Form IV.

13. Anyway, the basic thrust in the submissions made on behalf of the respondents is on the non-fulfillment by the appellants of the conditions precedent for treatment as an "eligible cinema house'' which about is the beneficiary of the scheme.

14. The learned Counsel for the Respondents has taken us through the various provisions of the scheme, Clause 3(C) of the Scheme defines "eligible cinema house" as a permanent cinema house possession a valid license under rule 6 of the W. B. Cnemas (Regulation of Public Exhibition) Rules 1956 for which the permission for construction was granted under rule 4 of the said rules after the first day of April, 1976. Rule 4(1) requires that "any person desirous of building a permanent cinema house shall before commencing constructor thereof make the application in writing giving all necessary particulars to the District Magistrate for the approval of the proposed site and plan of the building." The Licensing Authority shall examine the application in the light of the suitability of the site or the proposed permanent cinema house. If found suitable, the said authority shall publish notice in the office calling for objection, if any to the construction of proposed permanent cinema house, within in a period of 30 days (Rules 2 & 3), After the objections if any filed under Rules 2 & 3 have been heard and disposed of the Licencing Authority may permit the construction of the permanent cinema house. Any order of the Licencing Authority permitting or refusing to permit the construction of a permanent cinema house is appealable (Rule 4A).

15. According to the contentions of the respondents, on 29th May 1972 the appellants merely submitted a site plan before the District Magistrate without, however, any building plan required by Rule 4(i). It is not however, denied by the respondents that the approval for the construction of the permanent cinema house at the proposed site by the District Magistrate came forth through a letter dated 15th March. 1975. but the respondents have distinguished between approval of construction at a proposed site with an approved building plan and mere approval of the site without accompanied by an approved building plan. It is only in the former case that it could be said that the requirement of Rule 4 is satisfied, but not in the other event, where merely the site is approved but not the building plan. Thus the appellants go out of the ambit of Rule 3(c) and are not entitled from the benefit of the Scheme, it is contended.

16. Similarly, the execution of the agreement is also an imperative prerequisite, but in the appellants'' case there was no execution of an agreement with the

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State Government. Further, registration is also an essential requirement under the Scheme which cannot be skippied. According to the respondents, the application to the District Magistrate submitted long before the Scheme came into being could not be substituted as the application by the appellants, as the same was not made to the Administrator in the prescribed Form No. 1. Again, the requirement of the minimum exhibition of eligible films is also a mandatory requirement which remains unsatisfied in the case. The respondents case is that the appellants not having abided by any of the requisite conditions could not claim eligibility for the incentive under the Scheme. This noncompliance cannot be attributed to the appellants'' ignorance as the appellants were well aware of the requirements of the Rules and the Conditions of the Scheme. Therefore, the question of promissory estoppel also does not arise as the appellants knew that there could not be a promise of subsidy in the appellants'' case as the multiple conditions with which the Scheme is hedged are not fulfilled. The appellants are debarred from the benefit.

17. The last strand in the contentions of the respondents is that by virtue of the rescission of the scheme with effect from 5th May 1980 there is no question of the subsidy being available inasmuch as the Scheme is by then a dead one.

18. We have considered the rival contentions. The crux of he matter lies in the issue whether the appellants could be said to have acted upon inducement by the publication of the Scheme which doubtless held out a promise of a benefit and whether the refusal of the benefit constituted a breach of promise so that the principle of promissory estoppel could apply.

19. This again turns on the question whether the appellants'' conduct is impeachable on any failure or acts of omission or commission to call for total disqualification and consequential banishment from the benefit of the Scheme. In this case, the District Magistrate admittedly approved the building plan for the construction by a letter dated March 29, 1977. Now the Scheme requires that the subject cinema house must be one for which the permission for construction was granted after April 1, 1976. It is not in dispute that as regards the approval and period of construction the cinema house of the appellants answers the definition of "eligible cinema house''. The fact which the respondents turned against the appellants is that the District Magistrate on his initiative obtained the building plan; the appellants on their own did not initially furnish any building plan. This, in our view, is an immaterial consideration. The fact remains that the plan for building a permanent cinema house was approved by the District Magistrate on March 29, 1977, a date falling much after he date-line of April 1, 1976. Therefore, viewed from at angle the Cinema house would be an ''eligible cinema house''. As regards non-fulfillment of other conditions with regard to execution of agreement and registration of the cinema house, the appellants'' case is that the appellants approached the District Magistrate as well as the Finance Department of the State Government to be instructed as regards the paraphernalia for registration and other such requirements as well as the authority with whom to

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get the cinema house registered. But the said authorities remained totally passive. The petitioners cannot be anyhow said to have been sleeping upon their rights under the Scheme. When they came to know that the Information and Public Relations Department would notify the appointment of the Administrator for the Scheme, they wrote to the said department. All the efforts failed to elicit any information and assistance enabling the petitioners to take steps towards complying with such requirements. It is also not disputed that despite non-co-operation on the part of the respondents the petitioners submitted the application in Form No. 1 for registration certificate in Form No. 2. It is also a fact that the petitioner continued the construction. The permanent licence as a cinema house was also obtained by the petitioners on 10th September, 1979. It was only at a much late stage that the appellants came to know that the respondent no. 2 was appointed as Administrator under the Scheme. It cannot be said that the appellants were not diligent or vigilant to secure the benefit under this scheme. It has, therefore, to be inferred that the appellants were induced by the promise of the Scheme to alter position. Previously, they abandoned their Scheme for building a permanent cinema house for their resources constraint. They embarked upon the said Scheme only upon being emboldened by the certain prospect of the financial benefits the construction of permanent structure would fetch them by way of subsidy under the Scheme and provide a cushion for the cost in terms of interest on borrowing necessitated to finance construction. It is not that the appellants were sitting pretty or were sleeping upon their rights. The course of the conduct show that they would not have undertaken the financial hazard of building a permanent cinema house out of borrowing. Therefore, the appellants have legitimate plea so that the respondents should not be allowed to resile from their commitment on which the appellants placed implicit faith.

20. Our attention was drawn in this regard to the judgment or a Division Bench of this Court in State of West Bengal v. Jitendra Nath Khan & Anr., vide F. M. A. 819 of 1991. in which judgment was delivered on 18th December, 1992. There the application for entering into agreement was made by the owners of the cinema house (Respondents) on 13th December, 1985. But the State Government authorities held that the owners of the cinema were not entitled to any benefit of the Scheme as the Scheme stood rescinded with efect from 5th May, 1980. The representation for execution of agreement or registration under the Scheme was brushed away on that score. The Division Bench upheld the order of the Court of first instance directing the said authorities to register the name of the cinema house and to extend all incentives under the Scheme to the owers of the cinema (Respondents). The Division Bench held that so long as the basic condition that the cinema house was constructed after 1st April, 1976 and was possessing the licence is fulfilled it is not open to the State Government to deny the benefits of the scheme to such cinema house. There also, the State Government raised objection that the life of the scheme having been exhausted on 5th May, 1980, the benefit is no more of avail. The Division Bench was not

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persuaded by such argument because the requirement of the Scheme was that the cinema house must be an eligible cinema house, i.e. one built with approval within the period of the Scheme and if the eligibility arises on or before 5th May. 1980, the benefit for three years would avail the cinema house. The Division Bench also relied upon the principle of promissory estoppel as laid down by the Supreme Court in M. P. Sugar Mills Co. Ltd. v. State of U. P., reported in AIR (1979) SC 621; Gujrat State Financial Corporation v. M/s. Lotus Hotel (P) Ltd., reported in AIR (1983) SC 848: State of Bihar v- Usha Martin Industries, reported in (1987) (SUPP) SCC 710: Gokul Oil Industries v. State of Gujrat & Ann, reported in AIR (1987) SC 142 and Union of India (UOI) and Another Vs. Wing Commander R.R. Hingorani (Retd.), There the Division Bench examined the various aspects of the principles of promissory estoppel and drew the following conclusions:-

(1) A representation of the existing fact rather than a mere promise made by one party to the other is necessary.

(2) Secondly, the other party must be induced to act in faith of such representation, and

(3) Thirdly, in so acting he altered his position to his detriment.

All the three factors must combine to constitute a situation where the promissory estoppel shall apply.

21. In this case, we plainly see that there was representation to the appellants of the existence of a benefit. Secondly, the appellants placed implicit faith to such representation and undertook construction of a cinema house. Thirdly, the appellants In such faith risked the hazard of incurring Interest-boning debt for implementation of the cinema house on the promises of the State. Therefore, in our view, having regard to the facts and circumstances of the case, the teamed Single Judge in the instant case has not taken the proper and fair view of the matter and has gone on pure technical''s resulting in unreasonable denial and that too in violation of equitable principle of promissory estoppel.

22. The appeal therefore, succeeds and is allowed Rule is made absolute. Let appropriate writes issued.

23. The Cinemas house of the appellants shall be registered and the agreement Shall be executed as required under the said Scheme with in four weeks from the date of communication of this order. If within such period such registration is not made the said cinema house of the appellants shall toe deemed to be registered.

24. If the appellants have compiled with the requirement of the minimum sic time of eligible sic all benefits under the said scheme be made available to the appellants in terms of the said Scheme within eight weeks from the date of communication of this order. If due to financial hardship on the part of the State Exchequer the said benefits cannot be given to the appellants, the respondents shall consider whether such subsidy can be adjusted against the entertainment

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tax upon the appellants submitting monthly returns to the concerned authority to that effect.

25. There will, however, be no order as to costs.

Let a xerox copy of the above order be given to the parties on the usual undertaking.

Shyamal Kumar Sen, J.

I agree.

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