
(2000) 09 AHC CK 0055
In the Allahabad High Court
Case No : C.M.W.P. No. 1828 of 1990

Rajesh Talkies

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 22-09-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Cinemas (Regulation) Act, 1955 — Section 10, 13
Uttar Pradesh Cinematograph Rules, 1951 — Rule 3, 44, 8(2), 8(2)

Citation : (2001) 1 AWC 375(1)

Hon'ble Judges : S.R. Alam, J; R.K. Agrawal, J

Bench : Division Bench

Advocate : M.B. Saxena, for the Appellant; S.C. and Chandra Shekhar Singh, for the Respondent

Judgement

R. K. Agrawal, J.—The petitioner Rajesh Talkies, Kasba Sonbarsa, district Gorakhpur through its proprietor Shri Ram Shanker Prasad has filed the present petition under Article 226 of the Constitution of India seeking a writ of certiorari quashing the order dated 1st September, 1989 passed by the Special Secretary, Government of U.P., Lucknow, respondent No. 1 filed as Annexure-8 to the writ petition. The petitioner further seeks a writ of mandamus directing the respondents to accept its application for the grant of licence and further to grant permanent licence to the petitioner as are the requirement of the Rules without seeking compliance of the order dated September 1. 1989. The petitioner also seeks a writ of certiorari quashing the 20th Amendment made in the U. P. Cinematograph Rules, 1951 [hereinafter referred to as the Rules), as also a writ of mandamus directing the respondent to allow the petitioner the benefits under the Government Notification dated 21st July, 1986,

2. The facts of the case in brief are that the petitioner started construction of a Cinema building in Qasba Sonbarsa, district Gorakhpur from 1st December, 1987. However in June, 1988 the petitioner submitted an application to the State Government through the District Magistrate, Gorakhpur, seeking condonation of

his failure to obtain prior approval of the site plan on which the proposed permanent building is being constructed as required under Rule 3 of the Rules. After completing various formalities by the petitioner, the concerned authorities submitted their reports that the construction is being done in accordance with the site plan as per the Rules. The State Government vide order dated 1st September, 1989, Informed the District Magistrate, Gorakhpur, that the petitioner would be granted exemption u/s 10 of the U. P. Cinemas (Regulation) Act, 1955 (hereinafter referred to as the Act), for Rule 3 (3) and Rule 8 (2) only after he fulfils three conditions, namely, that the petitioner would dismantle the Kachcha wall on south west and north west and construct another wall after a distance of 20 feet from the building. It was further communicated that the petitioner would not get any advantage of grant-in-aid under the Government Notification for the new Cinema Hall and that the petitioner will have to give an undertaking to that effect in writing. Further the petitioner was required to deposit a sum of Rs. 50,000 in respect of exemption under Rule 3 (3) and Rs. 35,000 in respect of exemption under Rule 8 (2) of 1951 Rules. The aforesaid order dated 1st September, 1989, is under challenge in the present petition. This Court vide order dated 16.2.1990 passed the following interim order :

"No Counter-affidavit has been filed.

Issue notice.

Since the petitioner had already made a construction of the Cinema Hall, we direct that in case the petitioner deposits a sum of Rs. 50,000 in pursuance of the impugned order dated 1.9.1989, the operation of the impugned order dated 1.9.1989 shall remain stayed. In case the petitioner files an application for grant of permanent licence for exhibiting cinematograph film. the same would be considered and decided in accordance with law. The amount which the petitioner is required to deposit in pursuance of the order impugned shall be subject to the final decision of this writ petition.

Sd. V. N. Khare

Sd. H. C. Mittal

16.2.1990"

3. According to the petitioner, he had deposited a sum of Rs. 50,000 in compliance with the interim order dated 16.2.1990 and the District Magistrate, Gorakhpur had granted licence on 22.4.1990. It appears that vide order dated 9th September, 1990, the petitioner has been granted the benefit of grant-in-aid scheme by the District Magistrate, Gorakhpur. The fact regarding grant of licence and benefit of grant-in-aid given to the petitioner has been mentioned in C.M. Writ Petition No. 211 (Tax) of 1997 filed by the petitioner which vide order dated 4.10.1999 has been directed to be listed along with the present petition. To complete the sequence of fact, it may be mentioned here that subsequently the District Magistrate, Gorakhpur vide order dated 18.2.1997 cancelled the grant-in-

aid given to the petitioner. The said order dated 18.2.1997 was challenged by the petitioner in C.M. Writ Petition No. 211 (Tax) of 1997, which was allowed by this Court vide judgment and order dated 6th May, 1997 and the order cancelling the grant-in-aid was quashed by this Court.

4. We have heard Shri Mool Bihari Saxena, learned counsel for the petitioner and Shri Chandra Shekhar Singh, learned standing counsel on behalf of the respondents.

5. The learned counsel for the petitioner submitted that u/s 10 of the Act, the State Government has been empowered to grant exemption subject to such condition and restriction as it may Impose any exhibition or class of exhibitions by means of Cinematograph or Video from any of the provisions of the Act or any Rules made thereunder. He submitted that u/s 10 of the Act, the State Government has no power to impose any condition regarding payment of fee as composition charges. He further submitted that Rule 44 in the Rule has been Inserted by Notification No. 346/X-MK-89-XXR(1)-84 dated 27.4.1989 with effect from 1st May. 1989, which provides for Imposition of composition charges while granting exemption u/s 10 of the Act. He further submitted that Section 13 (2) (aa) was Inserted in the Act by U. P. Act No. 12 of 1989 w.e.f. 15.4.1989. Section 13 (2) (aa) enabled the State Government to make Rules for the imposition of composition charges not exceeding Rs. 50,000 on payment whereof exemption u/s 10 may be granted from the provisions of the Rules relating to the site or building to be used for exhibition by means of cinematograph. He submitted that Rule 44 having been Inserted w.e.f. 1st May, 1989 and the State Government having been given the power to make Rule for imposition of composition charges w.e.f. 15.4.1989, the said rule will not apply to a case where an application has been made before 15.4.1989 as in the present case where the application was filed in June. 1988, for approval of the site plan.

6. The submission made by the learned counsel for the petitioner is not correct. Even earlier to the Insertion of Rule 44 in the Rule as also the amendment made in Section 13 (2) of the Act, the State Government had the power u/s 10 of the said Act to grant exemption, subject to such conditions and restrictions as it may Impose, from any of the provisions of the Act or any Rules made thereunder. The conditions and restrictions which may have been Imposed would also cover the payments of such fee as the State Government may think fit in the circumstances. It is only to rationalize the payment of fee for granting exemption for violation of the various Rules that a specific provision has been made by inserting Rule 44 in the Rules. Thus, the State Government was fully justified in levying the composition charge as provided in Rule 44 of the Rules upon the petitioner.

7. So far as condition No. 2 imposed by the State Government in the order dated 1.9.1989, i.e., the petitioner would not be entitled for the benefit of the grant-in-aid and shall give an undertaking in writing is concerned, we find that in the Government order dated 21st July, 1986 a copy whereof has been filed as

Annexure-3 to the Writ Petition No. 211 (Tax) of 1997, there was no such condition which stipulated that the grant-in-aid scheme would not be available to such cinema owners who had constructed the cinema building without obtaining permission from the licensing authority under Rule 3 of the Rules and had been granted licence by the State Government after granting exemption from the said Rules unlike the specific condition laid down in the Government Order dated 18th July, 1989. It may be mentioned here that the Government Order dated 21st July, 1986, had extended the benefit of the grant-in-aid given in earlier Government Order dated 17th September, 1983, to those persons who applied for issue of cinema licence during the period 1st January, 1984 to 31.3.1990 whereas the Government Order dated 18th July, 1989, applies in the situation where the application for constructing the cinema building has been made on or after 1.4.1989 and the licence is applied during the period 1.4.1990 to 31.3.1995. Thus, in the present case, the grant-in-aid scheme as provided (n the Government Order dated 21st July, 1986, would be attracted. The said Government order did not contain any condition for denying the benefit of grant-in-aid scheme to those persons who have constructed the cinema building without obtaining permission from the licensing authority under Rule 3 of the Rules and subsequently exemption has been granted by the State Government. Thus, the State Government was not competent to impose any such condition in the impugned order dated 1st September, 1989. The said condition is arbitrary and without the authority of law. Therefore, the aforesaid condition No. 2 cannot be sustained and is hereby quashed.

8. No other point has been pressed.

9. In view of the foregoing discussions, the order dated 1st September, 1989, passed by the State Government except condition No. 2 mentioned therein is sustained. Since the petitioner has already been granted a licence to exhibit cinematograph films and have also been granted the benefit of the grant-in-aid scheme by the District Magistrate, Gorakhpur, it is not necessary to pass any orders in respect of the other reliefs prayed for by the petitioner in the present petition.

10. The petitioner under the interim order dated 16.2.1990 passed by this Court was required to deposit a sum of Rs. 50,000 only as against Rs. 85,000 to be deposited under the said order. The petitioner has been granted licence and the benefit of grant-in-aid also and has been exhibiting the cinematograph films all these years. In order to adjust the equities between the parties, we find that the petitioner has already deposited a sum of Rs. 50,000 in terms of the Interim order dated 16.2.1990. Therefore, the petitioner is directed to deposit the balance amount of Rs. 35,000 along with interest at the rate of 15% per annum with yearly rest from the date of the impugned order dated 1.9.1989 within one month.

11. In the result the writ petition succeeds and is allowed in part.