(1997) 05 AHC CK 0185

In the Allahabad High Court

Case No : C.M.W.P. No. 311 of 1997

Ram Chitra Mandir — APPELLANT

Vs

District Magistrate — RESPONDENT

Date of Decision : 20-05-1997

Acts Referred:

Uttar Pradesh Cinematograph Rules, 1951 — Rule 14
Uttar Pradesh Entertainments and Betting Tax Act, 1979 — Section 3(1)
Uttar Pradesh Entertainments and Betting Tax Rules, 1981 — Rule 24A, 24A(1), 24A(2), 24A(3), 24A(4)

Citation : (1997) 05 AHC CK 0185

Hon'ble Judges : S.L. Saraf, J;Om Prakash, J

Bench : Division Bench

Advocate : A. Kumar, for the Appellant;

Final Decision : Allowed

Judgement

Om Prakash, J.—By this petition, Petitioners engaged in the business of exhibiting cinematograph films in their cinema theatre, named as ''Ram Chitra Mandir'', Allahabad district, seek quashing of impugned order dated 1.4.1997 (Annexure ''11'' to the writ petition) passed by the Respondent rejecting the Petitioners'' option made in Form ''R'' declaring two shows as against three shows, declared in the preceding years under Rule 24A of the U.P. Entertainments and Betting Tax Rules, 1981 (briefly, ''the Rules'') for making compounded payment under the proviso to Section 3(1) of the U.P. Entertainments and Betting Tax Act, 1979 (the Act'', for short) on the ground that reduction in number of shows from three to two, will cause in reduction in the gross collection capacity.

2. This petition raises a short question for consideration whether the Petitioners were free to declare any number of shows for the financial year 1997-98 in the option Form ''R'', submitted by them for making compounded payment within the meaning of the proviso to Section 3 (1) of the Act.

3. Sub-section (1) of Section 3 of the Act provides that there shall be levied and paid on all payments for admission to any entertainment, an entertainment tax at such rate not exceeding one hundred and fifty per cent of each such payment as the State Government may from time to time notify in this behalf and the tax shall be collected by the proprietor from the person making the payment for admission and paid to the Government in the manner prescribed.

Proviso to Sub-section (1) states 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 as the State Government may from time to time notify.

4. The Petitioners are running their cinema theatre in a local area having a population of less than one lac and, therefore, they opted for compounded payment under the proviso to Section 3 (1) in Form ''R'', filed on 17.3.1997 for the financial year 1997-98 declaring two shows, but that was rejected by the Respondent in view of Sub-rule (4) of Rule 24A of the Rules, which runs as under:

(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 the 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.

5. The question for consideration is whether on the facts and in the circumstances of the case, Sub-rule (4) of Rule 24A is applicable. To find out answer of this question, it is nothing but appropriate to dissect the anatomy of the relevant provisions of the Act and the Rules.

6. Under the proviso to Section 3 (1), proprietor of a cinema theatre in a local area having a population upto one lac, may, in lieu of payment under Sub-rule (1), pay a compounded payment to the State Government on such conditions and in such manner as may be prescribed and at such rate as the State Government may from time to notify.

7. Rule 24A relates to compounded payment of tax. Sub-rule (1) of Rule 24A 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 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 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 at full price and on reduced price, if any. It is under this sub-rule, the Petitioners opted for compounded payment in Form ''R'' declaring two shows inter alia. It is admitted that in the previous years, the Petitioners had declared more shows than two.

Sub-rule (2) of Rule 24A mandates that option once exercised shall be valid for the period of a financial year, meaning thereby, that option once exercised cannot be withdrawn during the financial year for which the option was made.

Sub-rule (3), Clause (i) enjoins upon the District Magistrate to communicate to the proprietor the gross collection capacity and the weekly tax payable by the cinema in Form ''S'' within a week of the receipt of the application. Sub-rule (3) Clause (ii) lays down the manner for calculation of the gross collection capacity which shall be calculated by multiplying the number of seats in various classes in a cinema by the respective current ticket rates (including payment for admission and entertainment tax thereon) and multiplying the sum so derived by such number of shows as the proprietor of the cinema declares to give in a day. Sub-rule (4) already reproduced obligates upon the proprietor to strictly adhere to the declaration made under Sub-rule (1). Sub-rule (4) further provides that before effecting any change in the number of seats, the ticket rates and the number of shows, the proprietor shall obtain permission of the District Magistrate.

Sub-rule (5) provides that 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.

8. So, the scheme of Rule 24A is that the proprietor of a cinema opting for the compounded payment of tax permissible under the proviso to Section 3(1), shall exercise his option in Form ''R'', appended to the rules declaring total number of shows to be exhibited in a day besides making declaration about the number of seats and the rates of ticket. From Sub-rule (1) of Rule 24A, it is clear that the proprietor of a cinema is not under any legal obligation to declare same number of shows which he carried on in the past. Sub-rule (2) clearly states that the option once exercised shall be valid only for the relevant financial year. Sub-rule (1) of Rule 24A does not prohibit the proprietor of a cinema to declare lesser number of shows than those he might have exhibited in the proceeding years. The words "declare the total number of shows to be exhibited in a day" occurring in Sub-rule (1) clearly indicate that the proprietor is free to give option for any number of shows he intends to exhibit in a day during the relevant financial year for which option is exercised. Unless there is a clear prohibition in the sub-rule, it will not be open to the authorities to cull out one. The cardinal principle of interpretation of statutory provisions is that so long as the language employed in them is clear, unambiguous and free from any vagueness, the full effect should be given to their plain language without reading into them any foreign words and without subtracting from them any word. Taking the semantic view of Sub-rule (1) which is fully warranted by the clear language, employed in it, there is no warrant to read the expression "declare the total number of shows to be exhibited in a day" as ''declare the total number of shows not less than the shows exhibited in a day in the past''.

9. Then comes Sub-rule (4) which is pressed into service by the Respondent for rejecting the option of the Petitioners for the financial year 1997-98. The

Respondent took the view that if the Petitioners are permitted to declare reduced number of shows in Form ''R'' for the financial year 1997-98, that would result into reduction of gross collection capacity and that is not permitted by Sub-rule (4), inasmuch as that permits only an upward revision. Sub-rule (4) clearly states that the proprietor shall strictly adhere to the declaration made under Sub-rule (1), meaning thereby, that the proprietor shall abide by the declaration made in Form ''R'' for the whole financial year. Whatever declaration is made in the option Form ''R'' in the beginning, that would remain in force for the whole financial year. But this is not an absolute rule, inasmuch as Sub-rule (4) permits a change in the declaration made under Sub-rule (1) in certain circumstances. Sub-rule (4) clearly says that before effecting any change in the number of seats, the ticket rates and the number of shows, the proprietor will have to obtain permission of the concerned District Magistrate. It shows that change in the declaration is permissible but that is possible only with the permission to be accorded by the District Magistrate. Unless a change is permitted by the District Magistrate, the declaration made in Form ''R'' under Sub-rule (1) will remain operative for the whole financial year. Change contemplated by sub rule (4) is a post-composition agreement change. The Petitioners submitted their option in Form ''R'' making declaration in regard to number of shows, number of seats and the rates of ticket of various classes. The declaration so made originally in Form ''R'', cannot be said to be a change, simply because the Petitioners did not adhere to the number of shows which they might have exhibited in the previous years. Every year is separate and an option in Form ''R'' has to be made for each year separately. There is no requirement under the Rules, insofar as the number of shows is concerned that option in Form ''R'' will not be accepted, unless the Petitioners adhere to the number of shows, which they exhibited in the past, rather Sub-rule (1) clearly provides that a written option shall be submitted in duplicate to the District Magistrate in Form ''R'' declaring number of shows to be exhibited in a day. By giving a declaration in Form ''R'', the proprietor of a cinema theatre commits to exhibit the number of shows as declared. How many shows will be declared in Form ''R'', that has not been specified in Sub-rule (1), nor any condition has been imposed that number of shows declared in Form ''R'' would remain the same or on a higher side as exhibited in the previous years and, therefore, we are of the view that the Petitioners were free to declare two shows in Form ''R''. though they might have exhibited greater number of shows in the past. However, no change in the declaration could be made by the Petitioner, unless permission is obtained therefore under Sub-rule (4). In the case at hand, the Petitioners are not seeking any change, that is, post-composition agreement alteration within the meaning of Sub-rule (4), but they made a declaration specifying two shows to be exhibited in a day under Sub-rule (1), which though were less as compared to the earlier years, did not tantamount to a change within the meaning of Sub-rule (4). If the Petitioners seek any change in the number of shows as declared in Form ''R'', that is, if they want to reduce the number of shows from two to one, then that change will be governed by Sub-rule (4) and the Petitioners could not be permitted to deviate from the declaration originally made in Form ''R'', unless they are so permitted by the District Magistrate.

10. Learned standing counsel vehemently argued before us that if gross collection capacity stands reduced by the reduction of number of shows as declared in Form ''R'', then the Respondent is free not to accept the Petitioners'' option in Form ''R''. We are afraid that such submission of learned standing counsel has no force and that has to be rejected, in asmuch as the number of shows to be declared in option Form ''R'' has not been prescribed under Sub-rule (1); nor a condition is imposed that number of shows less than those exhibited in the past, cannot be declared.

11. Standing counsel further submits that in the beginning, the Petitioner had exhibited four shows, then they made option for three shows and still further they made a declaration of two shows for the financial year 1997-98 and that they cannot be permitted to reduce the gross collection capacity in such a systematic manner which is nothing but a device on their part to pay lesser tax. No doubt, the number of shows is tapered down systematically by the Petitioners, which will result into nothing but reduction of gross collection capacity. But the question is whether the Petitioners are legally prohibited in doing so. We do not find any such legal prohibition under the rules and, therefore, the Petitioners are free to declare any number of shows, regardless of the shows exhibited by them in the previous years.

12. The proviso to Section 3 (1) clearly states that the proprietor of a cinema in a local area having a population not exceeding one lac may make a compounded payment on such conditions and in such manner as may be prescribed. The State Government while giving the benefit of compounded payment of tax is free to impose any condition. So, the State Government can impose a condition that option in Form ''R'' will not be accepted by the District Magistrate, unless the number of shows declared match to the number of shows, exhibited in the past or unless higher number of shows than the past is declared. Unless such condition is clearly imposed by suitably amending Rule 24A, the Respondent could not have rejected the option in Form ''R'' of the Petitioner on the ground that they declared lesser number of shows as compared to the earlier years. Since the Petitioners are at liberty to declare any number of shows they intended to exhibit in a day. it would not be open to the District Magistrate to reject their option on the ground of the number of shows being reduced as compared to the previous years, notwithstanding that by reduction in number of shows, gross collection capacity would be adversely affected.

13. Learned standing counsel to buttress his contention that the option of the Petitioner declaring lesser number of shows could not be accepted, inasmuch as that would reduce the gross collection capacity, heavily relied on the case of State of Uttar Pradesh and others Vs. Vinay Kumar Jain, . In this case, the Respondent made a declaration in Form ''R'' reducing the number of seats, as specified in the licence and then the question arose whether the Respondent

could be permitted to exercise option under Sub-rule (1) in respect of the reduced number of seats. In that situation, the Court held as under:

...So far as the maximum number of seats and the Classes are concerned, the only document he has to see is the licence issued under the Cinematograph Rules, only if he is satisfied with the correctness of the particulars staled in the Application Form ''R'' that the District Magistrate comes under an obligation to issue the order in Form ''S'' with relevant particulars. This is the position if any proprietor wants to enter into a composition agreement for the ensuing financial year with reduced seating capacity. It may be mentioned that the case before us deals with such a situation. In other words, the case before us does not deal with the situation where the proprietor, having entered into a composition agreement, is seeking to reduce his seating capacity during the currency of the composition agreement. This is a case where the Respondent is asking the District Magistrate to enter into a composition agreement with him taking the seating capacity in his cinema theatre as 450 whereas the maximum seating capacity of his cinema theatre as per the licence issued under the Cinematograph Rules in 540. (Para 8 page 201)... while calculating the GCC (abbreviation for gross collection capacity by the Court) and the weekly tax payable, the District Magistrate shall take the maximum number of seats in various classes mentioned in the licence (issued under the U.P. Cinematograph Rules, 1951) as the basis. (Para 10 (2) p. 202).... It is not open to any proprietor to seek to enter into a composition agreement indicating a lessor seating capacity than the maximum mentioned in his licence (issued under the U.P. Cinematograph Rules, 1951) nor is it open to the District Magistrate to take any other figure of seating capacity than the maximum seating capacity mentioned in such licence. The remedy of any proprietor who wants to have the seating capacity of his cinema theatre reduced is to approach the Licensing Authority under Rule 14 of the U.P. Cinematograph Rules, 1951 and have his licence amended accordingly. Only then can that amended seating capacity be taken into consideration for the purposes of Rule 24A of the Uttar Pradesh Entertainments and Betting Tax Rules, 1981.

14. What is observed in connection with the declaration made for reducing the number of seats that does not hold to be good for the reduction of number of shows to be exhibited in a day. The number of shows is, admittedly, not prescribed in the licence and, therefore, the position of number of shows to be declared, is not analogous to the seating capacity to be declared in the option Form ''R''. Unless a restricted rule on the analogy of the seating capacity is framed or unless the existing rules are amended to that effect, the proprietor of a cinema theatre will be free to declare lesser number of shows than those he exhibited in the past. It may be a contrivance or may be a device on the part of the proprietor, but as the rules stand, the District Magistrate cannot be clothed with the power to reject the option simply on the ground that number of shows as compared to the earlier years, stands reduced. To exercise that power, there must be a specific rule, which unfortunately is not there in the existing rules.

15. In the result, the petition succeeds and is allowed. The impugned order dated 1.4.1997 (Annexure ''11'' to the writ petition) passed by the Respondent, is quashed and the District Magistrate, Allahabad (Respondent) is directed to pass an order afresh on the declaration made by the Petitioners in accordance with law within six weeks from the date a certified copy of this order is produced before him by the Petitioners.