(1992) 05 RAJ CK 0009

In the Rajasthan High Court

Case No : Civil Writ Petition No. 144 of 1988

Ram Raj Nahta APPELLANT

Vs

The State of Rajasthan RESPONDENT

Date of Decision : 20-05-1992

Acts Referred:

Citation : (1992) 1 WLN 371

Hon'ble Judges : A.K. Mathur, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.K. Mathur, J.—The petitioner by this writ petition has prayed that the order dt. 31.12.87 (Anx.4) withdrawing the exemption from payment of entertainment tax in respect of film "Dharam Bhai" produced by the petitioner may be declared illegal and same may be quashed.

2. The petitioner produced a film titled "Dharam Bhai" in the Rajasthani Language. The petitioner made an application to the respondent State praying that exemption from the entertainment tax for a period of six months may be granted to him in respect of the said film in accordance with the Rajasthan State Entertainment and Advertisement Tax Act, 1957 [hereinafter referred to the Act of 1957). This application of the petitioner was allowed by the order dt. 14.9.1987 and copy thereof has been placed on record as Ex. 1. In pursuance of the exemption granted by the respondent State, petitioner was required to submit two prints of the said film to Audio Visual Education Officer, Ajmer for the purpose of its exhibition without any charges in the rural areas. These two prints were given to the government without cost. On account of the exemption granted by the respondent State, petitioner took out 11 prints instead of the usual three prints at an additional cost of Rs. 3.5 lacs. He has also got the publicity material prepared so as to inform the public at large that the entertainment tax is not payable on the exhibition tickets of the said film. In this process petitioner got 50,000 posters printed at the cost of Rs. 1,00,000/-. The

petitioner entered into a number of agreements for exhibition of the film with the various exhibitors. But suddenly the exemption granted by the order dt. 14.9.1987 was withdrawn by the order dated 31.12.1987. A copy thereof has been placed on record as Ex.4. It is submitted that on account of withdrawal of this exemption, the petitioner''s collection were reduced and he had to suffer a loss also. In these circumstances, the petitioner filed the present writ petition on the ground that once the exemption has been granted by the government, they cannot withdraw on the basis of the principle of promissory estoppel. It is submitted that on account of this exemption, petitioner had to suffer, therefore, the State Government should be estopped from withdrawing this exemption.

3. A reply has been filed by the respondent and the respondent State has taken the position that on account of the acute famine conditions the exemption granted by the respondent was withdrawn and it is further submitted that the prints which were delivered to the State of Rajasthan were sought to be returned back by sending a communication to the petitioner representative at Jodhpur that they can collect these two prints. But nobody has turned up to collect these two prints.

4. I have heard learned Counsel for the parties and perused the record.

5. It is a fact that the exemption was granted to the petitioner by the communication dt. 14.9.1987 for a period of six months and on account of this exemption petitioner undertook the additional liability of preparing additional prints and delivered two prints without cost to the Government of Rajasthan as per the terms of the exemption and he spent a large sum of. money on publicity also that the film has been given the exemption from entertainment tax. But suddenly same was revoked by the communication dt. 31.12.1987 (Anx.4) as such the petitioner could only get the benefit of entertainment relief for a period of three months. It is submitted that on account of this act of the State of Raj. petitioner had to undertake that much of extra financial burden and by withdrawing this exemption petitioner will be put to huge loss of preparing extra prints and the money spent on the publicity.

6. Mr. Mridul, learned Counsel for the petitioner submitted that the State cannot be permitted to withdraw this kind of the exemption by virtue of principle of promissory estoppel. In support thereof learned Counsel has invited my attention to the decision reported in AIR 1987 SC Page 590. In this case certain benefits were given by the Kerala Government from Kerala General Sales Tax Act for establishing the industries but these concessions were subsequently withdrawn, therefore, the matter was agitated before the Hon''ble Supreme Court and the Hon''ble Supreme Court after referring to the earlier decision given in the case of M.P. Sugar Mills reported in AIR 1979 SC page 621 held that the State Government cannot be permitted to withdraw such concession. After following the ratio laid down by the Hon''ble Supreme Court in a case of M.P. Sugar Mills (supra) observed as under:

It is not disputed that the first order namely, the one dt. 11.4.79 gave more of tax exemption than the second one. The second notification withdraw the exemption relating to purchase tax and confined the exemption from sales tax to the limit specified in the proviso of the Notification. All parties before us who in response to the Order of April 11,1979 set up their industries prior to 21.10.80 within the State of Kerala would thus be entitled to the exemption extended and for promised under that order. Such exemption would continue for the full period of five years from the date they started production. New industries set up after 21.10.80 obviously would not be entitled to that benefit as they had notice of the curtailment in the exemption before they came to set up their industries.

Mr. Mehta, learned Counsel for the respondent submitted that the respondent who granted exemption can also revoke, the same. Learned Counsel submitted that on account of acute famine condition, the exemption was revoked. It is true that it may be a good ground for revoking the exemption but at the same time a person who has suffered on account of promises held by the State has to be compensated. If the exemption has not been granted perhaps the petitioner would not have undertaken the additional financial burden by printing extra, prints and providing two prints to the respondent State. Since the petitioner had to undertake the extra financial burden on account of promises i.e. the exemption granted by the respondent, therefore, by virtue of principle of promissory estoppel, the respondent cannot be allowed to go back. In these circumstances, the only option left is to permit the petitioner to have the benefits of exemption of entertainment tax for unexpired Period of exemption of his exhibition of film.

7. The writ petition is accordingly allowed to this extent.

