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(2013) 07 AHC CK 0323

In the Allahabad High Court

Case No : C.M.W.P. No. 1495 of 2010

Ratan Chandra APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision : 19-07-2013

Acts Referred:

Citation : (2014) 3 AWC 2336

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Arun Tandon, J.—The State Government under the order impugned passed in an appeal filed by the petitioner-owner of Rakes Talkies, Saharanpur u/s 12(2) of the U.P. Entertainment and Betting Tax Act, 1979 has rejected the appeal on the ground that the cinema hall of the petitioner was not air-conditioned earlier. Petitioner has realized maintenance fee from the cinema-goers but has utilized the same for the purchase of new plant and machinery for the purposes of converting his ordinary cinema hall into an air conditioned cinema hall. This purchase of new plant and machinery for providing new facility of air conditioning has been held to be not covered by maintenance within the meaning of Section 2(3) of the Act. Hence, financial liability has been fastened.

2. Challenging the order so passed counsel for the petitioner contended that Section 3A of the Act permits for a provision being made for air conditioning within the definition of maintenance and, therefore, if the petitioner has provided for air conditioning after purchase of fresh plant and machinery, the same would fall within the definition of maintenance. It is then contended that the circular issued by the department, copy whereof is enclosed at page 52, contemplated that besides repairs of the wall, buildings, floors, gate, etc. provision could be made for improvement of air conditioning/air cooling system provided for in the cinema hall. Therefore, if a provision is made for the cinema hall being air conditioned, it will amount to improvement of the facility of air condition within

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the meaning of the said circular. The order of the State Government is, therefore, stated to be bad.

3. I have heard learned counsel for the parties and have examined the records.

4. For the purposes of appreciating the controversy raised on behalf of the petitioner it is worthwhile to reproduce Section 3A of the Act, which reads as follows:

3A. Extra charge for maintenance of cinemas and for air cooled and air conditioned facility.--Notwithstanding anything to the contrary contained in any other provision of this Act, the proprietor of a cinema shall utilize such amount of ticket value excluding entertainment tax and in such manner as may be notified by the State Government from time to time for maintenance of the cinema premises and for air cooling or air conditioning facilities.

5. Reference may be had to the notification dated 4th September, 2009 issued in exercise of powers u/s 3A, which reads as follows:

NOTIFICATION

In exercise of the powers u/s 3A of the Uttar Pradesh Entertainment and Betting Tax Act, 1979 (U.P. Act No. 28 of 1979). the Governor is pleased to order that, with immediate effect, the proprietor of a cinema shall utilize Rs. 3.00 and Rs. 1.00 Re. 0.50 from each ticket value excluding entertainment tax for the maintenance of cinema premises and for air conditioning/air cooling facilities, respectively.

6. This Court may also reproduce relevant paragraph of the circular dated 27th December, 1996, which has been heavily relied upon by the counsel for the petitioner, which reads as follows:

7. From a simple reading of Section 3A, the notification dated 4.9.2009 as well as the circular, it is apparently clear that what is contemplated by maintenance is basically the repairs of the essential facilities at the cinema hall including the whitewashing of the buildings, repairs of the windows and gate, ticket counters, etc. The clause also provides for improvement of the centralized air cooling system and air conditioning facilities. It would, therefore, necessarily mean that any repairs/service of existing air conditioning facility at the cinema hall either by replacement of old machines or by repairing of the existing machines would be covered by maintenance.

8. The petitioner appears to extend the meaning to the maintenance beyond reasonable limits by suggesting that if the cinema hall, which is not originally air conditioned is subsequently air conditioned with the purchase of new plant and machinery, would amount to maintenance of air conditioning at the cinema hall.

9. Legislature, being conscious of the fact that the maintenance of cooling and air conditioning would incur large expenditure, has, therefore, provided additional maintenance fee of 50 paise per ticket for the said facility under the proviso to

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Section 3A. The word ''maintenance'' as defined in ''Concise Law Dictionary'' reads as follows:

"MAINTENANCE" include(s) the fencing, covering in, repairing, restoring and cleansing of a protected monument, and the doing of any act which may be necessary for the purpose of maintaining a protected monument or of securing convenient access thereto.

10. In my opinion there is no illegality in the order of the State Government so as to warrant interference under Article 226 of the Constitution of India.

11. Writ petition is dismissed. Interim order, if any, stands discharged.

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