

(2005) 03 AHC CK 0176

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2149 of 2002

Ravi Prakash Agarwal

APPELLANT

Vs

State of U.P. and District Magistrate/Licensing Authority

RESPONDENT

Date of Decision : 18-03-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Entertainments and Betting Tax Act, 1979 — Section 12, 3A, 3A(1), 3A(3)

Citation : (2005) 3 AWC 2412

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : Govind Krishna, for the Appellant; U.K. Pandey and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—Present writ petition under Article 226 of the Constitution of India is for quashing of order of State Government (Appellate Authority) dated 21.06.2002, by which appeal filed by the petitioner u/s 12 of U.P. Entertainment and Betting Tax Act (hereinafter referred to as "Act") has been rejected.

2. Petitioner was running a cinema hall and had charged a sum of Rs. 5,55,178/- towards the maintenance charges in the financial year 1997-98 from the cineviewers and admittedly, out of the aforesaid amount only a sum of Rs. 3,46,572 81p. had been shown to have been incurred in the maintenance and the balance amount of Rs. 2,08,605.19p. remained unused. District Magistrate, Varanasi in its order dated 29.03.2000 also held that a sum of Rs. 1,05,950.80p. which was shown incurred for diesel, mobil oil, security guard and cinema carbon were not the expenses for maintenance of cinema hall and accordingly, petitioner was directed to deposit a sum of Rs. 3,14,555.99p. Against the order of District Magistrate, Varanasi, appeal was filed before the State Government rejected by the impugned order. State Government rejected the appeal relying upon the

decision of this Court in Writ Petition No. 1187 of 1993 in the case of Sarju Chitra Mandir, Ballia and Anr. v. Commissioner of Entertainment Tax Lucknow and Ors. It has also been held that in view of the decision of Allahabad High Court earlier Government Orders dated 30.07.2001 and 20.03.2001 have been cancelled.

3. Heard Sri Govind Krishna, learned counsel for the petitioner and Sri U.K. Pandey learned Standing Counsel.

4. Learned counsel for the petitioner submitted that the amount which was realized toward maintenance charge included the admission fee as well as entertainment tax and therefore, only 50% of the said amount is required to be deposited and not entire amount u/s 3-A of the Act. He submitted that in other cases, cinema owners were directed to deposit only 50% of the amount and petitioner has been discriminated.

5. In my opinion argument of learned counsel for the petitioner has no force. Issue involved in the present case is squarely covered by the Division Bench decision of this Court in the case of Sarju Chitra Mandir, Ballia and Anr. v. Commissioner of Entertainment Tax, Lucknow and Ors., reported in 1996 AWC 415.

6. Section 3-A of the Act reads as follows:

"3-A. Extra (charge for maintenance of cinema and) for air cooled and air conditioned facility.

(1) Notwithstanding anything contained in this Act, the proprietor of a cinema may realize from the person making payment of admission to an entertainment in such cinema-

(a) an extra charge of (one rupee and fifty paise) which shall be utilized for maintenance of the cinema premises;

(b) in case of a centrally air-cooled or centrally air-conditioned cinema a further extra charge of (twenty five paise and sixty paise) for air-cooling or air-conditioning facility respectively during the period commencing on the fifteenth day of October next following:

Provided that the proprietor of a cinema receiving grant-in-aid from the State Government under any incentive scheme shall not be entitled to realize extra charge under clause (a) during the period such grant-in-aid is received by him;

(2) The amount charged under Sub-section (1) shall not be deemed to be payment for admission to an entertainment.

(3) Where the extra charge referred to-

(a) in Clause (a) of Sub-section (1) has not been utilized for maintenance of cinema premises;

(b) in Clause (b) of Sub-section (1) has been realized without providing the air-

cooling or air-conditioning facility as the case may be the amount so realised shall be deemed to represent the aggregate of additional payment for admission to the entertainment and entertainment tax payable thereon."

7. Division Bench has considered the scope of clause (a) of Sub-section (3) of Section 3-A and held that the entertainment tax will be equal to the unutilized amount which shall be deemed to represent the aggregate of additional payment for admission and the entire unutilized amount will fictionally represent the aggregate of entertainment tax. Further held that from Clause (a) it is clear that unutilized amount will first be deemed to represent the aggregate of additional payment for admission and again that amount is deemed to represent aggregate of entertainment tax payable thereon. Relevant paragraph of the judgment in the case of Sarju Chitra Mandir. Ballia and Anr. v. Commissioner of Entertainment Tax, Lucknow ;and Ors. (Supra) reads as follows:

"We do not agree with the submission of the counsel for the petitioners that extra charge of 25 paise, which remained unutilized, will amount to an admission fee per ticket and that will attract tax only at the rate of 75% of the said charge and that 25% of such charge will be retained by the petitioners, because such submission is just contrary to the deeming provision as contained in clause (a) of Sub-section (3) of Section 3A whereunder the unutilized amount shall be deemed to represent the aggregate of additional payment for admission. Tax will be calculated as per the rates given in the Schedule Rate of tickets for each class are specified by the cinema owner and, therefore, there is no justification to treat extra charge of 25 paise a the value of each ticket. Value of the ticket is the rate specified by the cinema owner and not the extra charge of 25 paise."

8. Argument of learned counsel for the petitioner that Division Bench of this Court is contrary to the recent decision of the Apex Court in the case of State of U.P. and Ors. v. Kamla Palace, reported in 2000 ALJ 240 can not be accepted. Before Apex Court there was no issue as involved in the present case. Therefore, it is not applicable. Agrument of learned counsel for the petitioner that in some other cases only 50% of the unutilized maintenance charge has been directed to be deposited, therefore, petitioner should also be directed to deposit 50% of the amount can not be accepted for the reasons that merely because in some case if on account of illegal considerations, the direction has been issued as alleged by the petitioner contrary to the decision of the Division Bench of this Court, such direction can not be issued in the case of the petitioner, which is contrary to decision of the Division Bench.

9. In the result. Writ petition fails and is accordingly, dismissed.