
(2003) 11 AHC CK 0156
In the Allahabad High Court
Case No : C.M.W.P. No. 48999 of 2003

Sandeep Palace

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 03-11-2003

Acts Referred:

Uttar Pradesh Entertainments and Betting Tax Act, 1979 — Section 3

Citation : (2004) 1 AWC 329

Hon'ble Judges : R.C. Pandey, J;B.S. Chauhan, J

Bench : Division Bench

Advocate : Manu Khare, for the Appellant;

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—This writ petition has been filed for quashing the impugned orders dated 19.12.1995 and 18.8.2003, passed by the statutory authorities under the Entertainment Tax Act, rejecting the application of the petitioner for grant-in-aid scheme.

2. Facts and circumstances giving rise to this case are that the petitioner filed an application on 22.1.1981 before the statutory authority under the Cinematography Act to permit him to raise the construction of a cinema hall and he also submitted the sanction plan. Construction of the cinema hall was completed and he was granted the licence to exhibit the films. He filed an application for granting the benefit of grant-in-aid scheme in terms of the Government Orders dated 21.7.1986 and 8.9.1986 (Annexures-1 and 2). However, his application was not considered. Being aggrieved, he approached this Court by filing Writ Petition No. 23844 of 1991 and some interim order was passed in his favour. As the matter was not decided, he filed another Writ Petition No. 13613 of 1993 which was disposed of finally vide judgment and order dated 31.3.1993, directing the authority concerned to decide his representation. The petitioner filed the representations but could not get the relief and the respondents have recorded the entertainment tax from him. Petitioner filed a

Writ Petition No. 65 of 1996 for quashing the order of recovery, but he could not get any relief and the petition was dismissed as withdrawn. He also continued making the representations for refund of entertainment tax deposited by him and the said representations stood dismissed vide impugned order dated 18.8.2003. Hence this petition.

3. Shri Manu Khare, learned counsel for the petitioner has submitted that petitioner was entitled to get the benefit of the grant-in-aid scheme under the aforesaid G.Os. but could not get it because of inaction/arbitrary action of the respondent authorities. He is entitled to recover the said amount. In support of his case, he has placed reliance upon large number of judgments of this Court, wherein a refund has been directed. The said judgments are in Writ Petition No. 3131 of 1986, Smt. Meera Srivastava and Anr. v. State of U.P. and Ors., decided on 26th April, 1989, wherein this Court had quashed the cut-off date and also directed the authority concerned to refund the amount of entertainment tax deposited by petitioner. Subsequent thereto, other petitions had been allowed following the said judgment, particularly. Writ Petition No. 5980 of 1990, Bhagyawanti Palace, Varanasi v. State, decided on 7.2.1991 ; Writ Petition No. 7277 of 1991, Paras Palace v. State of U.P., decided on 13.1.1995 ; Writ Petition No. 2187 of 1991. Gopal Movie House, Budaun v. State of U.P. and Ors., decided on 5.4.1994. It has been submitted by Shri Khare that as in the aforesaid judgment and orders directed of refund of the entertainment tax deposited by the cinema owner had been made, petitioner cannot be denied the same benefits. Petitioner is entitled for the relief sought in this petition.

4. There is a complete fallacy in the submission made by Shri Khare. In our opinion, in all the aforesaid cases which had been allowed by this Court, neither the issue of unjust enrichment had been raised by the State nor that point could be taken into consideration by this Court as none of the cinema owner could have submitted that they had not passed on the liability of entertainment tax to the cinema-goers. Therefore, the submission made by Shri Khare that the aforesaid judgments are binding on us is not tenable.

5. It is settled proposition of law that an issue, which has not been considered by the Court while delivering a judgment, cannot be said to be binding as a "decision of the Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the Courts must carefully try to ascertain the true principle laid down by the decision" of the Court. Vide H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and Another, , (popularly known as Privi Purse, case) ; Amar Nath Om Prakash and Others Vs. State of Punjab and Others, ; Rajput Ruda Meha and Others Vs. State of Gujarat, ; Sarva Shramik Sangh, Bombay Vs. Indian Hume Pipe Co. Ltd. and Another, and Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd., .

6. In Privi Purse case, the Hon''ble Apex Court observed as under :

"It is difficult to regard a word, a clause or a sentence occurring in a judgment of this Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment."

7. In *Balchandra Anantrao Rakvi and Ors. v. Ramchandra Tukaram (dead) by L.Rs. and Anr.* (2001) 8 SCC 616, the Hon'ble Supreme Court held that long standing precedents are not a ground for not giving effect to the correct position of law.

8. In *Bhavnagar University v. Palitana Sugar Mills (P.) Ltd. and Ors.*, the Hon'ble Supreme Court held as under :

"A decision, as is well known, is an authority for which it is decided and not what can logically be deduced therefrom. It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. Vide *Smt. Ram Rakhi Vs. Union of India (UOI) and Others, Delhi Administration (Now N.C.T. of Delhi) Vs. Manohar Lal, and Dr. Nalini Mahajan, Ram Lal Mahajan Charitable Trust, Shri Rakesh Mahajan, Pan Foods Ltd. and Others and Mahajan Industries Pvt. Ltd. and Others Vs. Director of Income Tax (Inv.) and Others*, ."

9. In *Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another*, , the Hon'ble Apex Court held that Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision relied upon. Observations of courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of courts are not to be construed as statutes.

10. The issue of unjust enrichment has not been reagitated before this Court in any of the cases referred to and relied upon by Shri Khare. Therefore, in view of the above, we reach to the conclusion that in case a particular issue has not been agitated before this Court, though it could have been raised, and had it been raised, it would have tilted the balance being a power question of law. The said judgments cannot be treated as having the force of binding precedent in the later case.

11. Petitioner has established a Cinema Hall in 1983. At that time, a Grant-in-aid Scheme was prevalent granting exemption on entertainment tax, if certain conditions were fulfilled. The exemption of entertainment tax was reduced every year by 25%, meaning thereby, if exemption of entertainment tax was granted, the cinema owner was exempted from realising from the cinema-goers and depositing the entertainment tax in the first year completely ; in the second year 75%, 3rd year 50% ; and in the 4th year 25%. For one reason or the other, petitioner could not be granted exemption.

12. The incentive of entertainment tax exemption was given to develop the cinema industry and attract more and more people to enjoy cinema. Had the

exemption been granted to the petitioner by the statutory authority at the relevant time, the cinema-goers could not be asked to pay the entertainment tax and they could have enjoyed the films at a much cheaper rate. The consequences of non-granting exemption had been that the cinema-goers had paid the entertainment tax and the petitioner being merely a trustee/collecting agent of the State received the entertainment tax from the cinema-goers and as he was under a legal duty to deposit the same, paid it to the State. It is not the petitioner's case that in spite of the fact that no exemption had ever been granted to him, he did not charge the entertainment tax from the cinema-goers.

13. This demand, if fulfilled, would be a windfall for the petitioner, and payment of the money of someone else, though he has not contributed a single pie towards this account would be made to him. He might have spent a few lacs of rupees in constructing the Cinema Hall and claims Rs. 27,00,000 from the State without any legal injury, prejudice, etc.

14. In *K.S. Satyanarayan v. V.R. Narayana Rao* AIR 1998 SC 2544, Hon'ble Supreme Court has held that juristic basis for such an order of recovery, even if not based on contract or tort, may fall on another category of quasi-contract or restitution. The Hon'ble Supreme Court, while deciding the said case, approved and followed two decisions of English Courts, namely, *Filbrosa v. Fairbairn* (1942) 2 All ER 122 and *Nelson v. Larholt*. (1947) 2 All ER 751, which are quite elucidating and the relevant parts thereof, respectively, are reproduced as under :

".....any civilized system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is to prevent a man from retaining the money of, or some benefit derived from, another which it is against conscience that he should keep. Such remedies in English law are generically different from remedies in contract or in tort, and are now recognised to fall within a third category of the common law which has been called quasi-contract or restitution."

"It is no longer appropriate to draw distinction between law and equity. Principles have now to be stated in the light of their combined effect. Nor is it necessary to canvass the niceties of the old forms of action. Remedies now depend on the substance of the right, not on whether they can be fitted into a particular framework. The right here is not particular to equity or contract or tort, but falls naturally within the important category of cases where the Court orders restitution if the justice of the case so requires."

15. For the same, reliance can safely be placed on the judgment in *State of Madhya Pradesh Vs. Vyankatlal and Another*, , wherein the Apex Court observed that "only the persons of whom lay the ultimate burden to pay the amount, would be entitled to get the refund of the same, and if it is not possible to identify the person on whom had the burden been placed for payment towards the fund, the amount of the fund can be utilised by the Government for the

purpose for which the fund is created."

16. While deciding that case, the Hon"ble Supreme Court relied upon a large number of its earlier judgments, e.g.. The Orient Paper Mills Ltd. Vs. The State of Orissa and Others, ; The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others, ; Shiv Shankar Dal Mills and Others Vs. State of Haryana and Others, ; The Newabganj Sugar Mills Co. Ltd. and Others Vs. The Union of India (UOI) and Others, and Sales Tax Officer, Banaras and Others Vs. Kanhaiya Lal Mukundlal Saraf, .

17. In Nawabganj Sugar Mills (supra), the Hon"ble Supreme Court devised a procedure to deal with a situation where equity demanded redistribution but procedural expensiveness and cumbersomeness effectively thwarted legal action by directing the Registrar of the High Court to receive and dispose of claim from the ultimate consumer for excess price paid on proper proof.

18. In Amar Nath Om Prakash and Others Vs. State of Punjab and Others, , the Hon"ble Apex Court observed that a mere declaration that the levy and collection of fee in excess of the required amount would automatically vest in the dealer, the right to get excess amount when in fact he did not bear the burden of it and the morale and equitable owner of it was the consumer public to whom burden had been passed on.

19. Similar view had been taken by the Supreme Court in Indian Oil Corporation Vs. Municipal Corporation, Jullundhar and others, ,

20. In State of Rajasthan and Others Vs. Novelty Stores, etc., , the Apex Court observed as under :

"The orders of the High Court in the impugned appeals are to be set aside on the sole ground that the respondents after paying octroi duty have passed on the burden to the consumers and collected from the consumers. Therefore, the order of refund would be an unjust enrichment for them. This Court has repeatedly held that such a refund should not be ordered..... since respondents are not entitled to the refund of the amount which is already collected and passed on the burden to the consumers, these appeals are to be allowed."

21. In Entry Tax Officer, Bangalore Vs. Chandanmal Champalal and Co. Etc. Etc., , the Hon"ble Supreme Court held that any direction for refund would amount to unjust enrichment of the respondents who were merely dealers and had passed on the burden to the consumers. The dealers had not suffered any loss, they had merely passed on the liability.

22. Similar view has been reiterated in Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others, ; M/s. Pawan Alloys and Casting Pvt. Ltd., Meerut etc, etc. Vs. U.P. State Electricity Board and others, ; Acqueous Victuals Pvt. Ltd. Vs. State of U.P. and Others, and Bhadrachalam Paperboards Ltd. and Another Vs. The Government of Andhra Pradesh and Others, .

23. In *Shree Digvijay Cement Company Ltd. v. Union of India and Ors.* AIR 2003 SCW 186, the Hon'ble Apex Court explained the scope of principle of unjust enrichment and held that before a claim is accepted, the claimant has to establish and satisfy the authority concerned that he has not passed on burden to any other person, i.e., consumer. In absence thereof, the money paid by somebody else cannot be claimed by him. While deciding the said case, the Court placed reliance upon its earlier judgment and held as under :

"Where the burden of duty has been passed on, the claimant cannot say that he has suffered any real loss or prejudice. Real loss or prejudice is suffered in such a case by the person who has ultimately borne the burden, and it is only that person who can legitimately claim its refund. But where such person does not come forward or where it is not possible to refund the amount to him, for one reason or the other, it is just and appropriate that amount is retained by the State, i.e., by the people. The doctrine of unjust enrichment is a just and solitary doctrine. The power of the Court is not meant to be exercised for unjustly enriching a person. The doctrine of unjust enrichment is, however, inapplicable to the State, for the State represent the people of the country. No one can speak of the people being unjustly enriched.....Beside the principle of unjust enrichment, on equitable principles which squarely apply here, the applicants are not entitled to claim refund of amount paid....."

24. Similar view has been reiterated in *Flash Laboratories Ltd. Vs. Collector of Central Excise, New Delhi*, ; *Hindustan Metal Pressing Works Vs. Commissioner of Central Excise, Pune*, and *Commissioner of Central Excise, Chandigarh-II Vs. Steel Strips Ltd.*, .

25. A Division Bench of this Court to which one of us (Dr. B. S. Chauhan, J.) was a member examined the similar issue while deciding the Writ Petition No. 651 of 1993, *Manoj Chitra Mandir v. District Magistrate, Sonbhadra*, vide judgment and order dated 15.4.1996, wherein also a claim of refund of Rs. 27 lacs was rejected on the ground that petitioner therein had passed on the liability of entertainment tax to the cinema-goers. While deciding the said case all the judgments referred to by Mr. Khare had been considered and found to be having no bearing on the said case as the revenue did not agitate the issue of unjust enrichment. Therefore, dealing with each case referred to above, i.e., *Meera Srivastava* etc. etc. the Division Bench of this Court took a contrary view that the petitioner therein could not claim the refund on any equitable principle. The said judgment was challenged before the Hon'ble Apex Court filing Special Leave to Appeal (Civil) No. 1469-14670 of 1996 and it was dismissed by their Lordships vide order dated 9.8.1996.

26. As the case is squarely covered by the judgment in *Manoj Chitra Mandir* (supra), petitioner cannot be granted the relief sought merely because he has staked the claim that he could be entitled for the benefit of grant-in-aid scheme. In spite of the fact that he has approached this Court and the authorities concerned several times and could not succeed in getting the exemption of

entertainment tax, it is not his case that he did not recover the tax from the cinema-goers and had deposited the same from his own pocket. Successive petitions have been filed in attempting the commission of robbery on public exchequer using the Court as a forum.

27. We fail to understand on what equitable principle he is successively approaching the statutory authorities and the Court. Filing of this kind of petitions amounts to abuse of process of the Court and such a practice deserves to be deprecated.

28. Thus, in view of the above, it cannot be held that the judgments referred to and relied upon by Shri Khare are binding upon us as the issue "unjust enrichment" has not been considered at all.

29. The writ petition is devoid of any merit, hence dismissed.