

(2005) 07 BOM CK 0114

In the Bombay High Court

Case No : Writ Petition No. 1912 of 1989

Shree Natwar Talkies

APPELLANT

Vs

Collector and Another

RESPONDENT

Date of Decision : 18-07-2005

Acts Referred:

Bombay Entertainments Duty Act, 1923 — Section 3, 3(1), 6, 6(3)

Citation : (2005) 6 BomCR 257 : (2006) 1 MhLj 269

Hon'ble Judges : Kukday S.P., J

Bench : Single Bench

Advocate : D.P. Palodkar, for the Appellant; N.B. Khandare, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

Kukday S.P., J.—In this petition, the petitioner impugns notice dated 29-6-1989 issued by Collector, Jalgaon, for recovery of excess amount of entertainment duty.

2. Learned Counsel for the petitioner has submitted that there were several other petitions, forming three groups. In one of the groups, the point for consideration was the population of the town concerned. In other group, the dispute relating to the recovery of the amount for the intervening period between the date of licence and delivery of permit, was involved. It is made clear that the points raised in this group of petitions are not decided earlier.

3. Briefly stated the facts are that petitioner runs a cinema talkies at Jalgaon, by the name and style "Shree Natwar Talkies" and holds a valid license and permit therefore under the provisions of Bombay Cinemas (Regulation) Act, 1953. As per the policy of the Government, exemption from payment of entertainment duty is given for some of the films exhibited for educational, scientific purposes, films for children etc. It is the case of the petitioner that he exhibited film "Aaj Ke Sholay", which was cleared by Censor board as a children film, during the period 12-12-1985 to 25-12-1985. The ticket rates for the different class were fixed

within the parameters of the concessions given by the Government, vide Government Resolution dated 14th March, 1983 issued by Social Welfare, Cultural Affairs, Sports and Tourism Department. By this resolution, the chargeable limit was increased from Rs. 2/- to Rs. 3/-. Although the petitioner adhered to this limit, Collector, Jalgaon, issued a notice dated 29-6-1989, requiring the petitioner to pay excess amount earned by him during the period 12-12-1985 to 25-12-1985, aggregating Rs. 18,114.40 ps. on the basis of objection raised by the office of the Accountant General (Audit)-I, Maharashtra. Being aggrieved by this notice for recovery of the amount of Rs. 18,114.40, petitioner has filed the present petition. According to the petitioner, the respondents cannot resort to subsequent clarification for showing that excess profit is earned, therefore, the impugned notice has to be quashed and set aside.

4. The point which arises for consideration in this petition is whether the Government can recover the alleged excess amount of profit earned by the petitioner on the strength of subsequent clarification.

5. Learned Counsel appearing for the petitioner contends that incentive is given for exhibition of screening films cleared by the Censor Board and featured for educational, scientific etc. purposes and for the children films. As per the policy, the Government, by Resolution dated 15th May, 1983, increased the amount chargeable from Rs. 2/- to Rs. 3/- for screening the films exempted from entertainment duty. Petitioner has complied with this requirement, therefore, it is not permissible for the Government to recover so-called alleged excess profit earned by the petitioner. On the other hand, learned Assistant Government Pleader has referred to the objections raised by the auditor of the Audit Department, showing that the petitioner has earned more profit than the normal profit and, therefore, excess profit ought to be recovered from the petitioner. According to learned A.G.P. there is no merit in the petition therefore, the petition deserves to be dismissed.

6. Undisputedly, the petitioner exhibited children film "Aaj ke Sholay" during the period 12-12-1985 to 25-12-1985 and claimed exemption from the entertainment duty and surcharge. In view of provisions of Section 3 subsection (1)(III) of the Bombay Entertainments Duty Act, 1923 (hereinafter referred to as the said Act), the petitioner is required to pay entertainment duty at the rate of 20 per cent out of the first 100 paise of the payment for admission; 29 percent out of the next 100 paise and 36 per cent out of the balance of the total payment for admission because population of Jalgaon is about one lakh. Section 6 of the said Act provides for exemption in payment of entertainment duty. Under this section, Government is empowered not to levy duty on payment for admission to any entertainment where the Collector is satisfied that certain condition exist. In the present case, we are concerned with Section 6(3). Under this sub-section, the State Government may, by general or special order, exempt any the year 1985-86. The objection is illustrated by giving a chart. It can be seen that normal rate is Rs. 4.95. On this amount, entertainment duty is Rs. 2.31. In

additional to this, surcharge payable is Rs. 0.45. Therefore, ordinarily, profit earned is Rs. 2.19. However, in the present case, petitioner has charged Rs. 3/- for balcony. As the entertainment duty is not charged excess amount of Rs. 0.81 ps. is earned by the exhibitor. Similar calculations are shown for First class, Second class and for morning shows. The gist of the objection is that more than normal profit is earned by the petitioner, therefore, excess amount should be recovered. In fact, if the excess profit is earned, it should be passed on to the patrons. However, it is now well settled that as the beneficiaries cannot be identified, this revenue should be recovered by the State. Be that, as it may; the fallacy of the calculation lies in the fact that it proceeds on wrong assumption in respect of their earning of profit. The basis is normal rates charged by the exhibitor. This is not a correct method of calculation. Admittedly, the petitioner did not screen the film/movie for charitable purpose therefore, he is entitled to earn legitimate profit for screening of the film. The calculation of profit does not depend only on the rate charged. The expenses incurred for electricity and other incidental expenses such as payment to employee etc. must be taken into consideration for calculating the profit. In entertainment or class of entertainments from liability to entertainments duty subject to such terms and conditions. If any, as may be specified in the order. By exercising this power, Government had earlier issued Government Resolution, permitting the exhibitors to charge Rs. 2/- as rate of ticket. As rightly pointed out by learned Counsel for the petitioner, by Government Resolution dated 14th March, 1983, the Government has of the said Government Resolution, the petitioner has availed of the said Government Resolution, the petitioner has availed the ion exhibiting the children firm in question. However, the Audit Department of the Government raised an objection that the petitioner has earned more profit than the usual profit, therefore, excess amount, sought to be recovered from the petitioner. This is the reason why the impugned notice is served on the petitioner.

7. Learned Counsel for the petitioner has rightly contended that incentive is given to exhibitors for screening the movies which are for children, for educational, scientific and other purposes. If the condition of not charging more than Rs. 3/- for admission is fulfilled, exhibitor is entitled to get concession and it is not open to the Government to say that as more profit is earned, excess duty would be recovered. On the other hand, learned A.G.P. has referred to the calculations in respect of excess collection given in para 1-A of the Audit Report for fact, the charges for different class are fixed considering the expenses to be incurred and margin of profit is decided. The occupancy in such type of films may not be full, therefore, this has to be taken into consideration, because, if the number of patrons is less then there may not be any profit. Having regard to these aspect, concession is given by the Government for screening these films on the conditions that amount charged to the patrons should not exceed Rs. 3/-. In this view of the matter, contention of learned Counsel for the petitioner that once this condition is fulfilled, profit cannot be calculated by the method adopted by the Audit Department, will have to be sustained. Learned A.G.P. has referred to

the clarification of the Government dated 3rd March, 1987. In fact, this is not a clarification. This communication merely validates objection raised by Audit Department that excess amount should be recovered from the exhibitors. Be that, as it may; subsequent clarification cannot be taken into consideration. Decision has to be taken on the basis of the norms prescribed by the provisions enacted in this behalf or found in the order passed by the Government. In support of this contention, reliance is rightly placed on the ruling of the Supreme Court in the matter of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, . In para 8 of the reports the Apex Court has referred to earlier judgment in the matter of Commissioner of Police, Bombay Vs. Gordhandas Bhanji, , in which it was observed as under :

"Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom then are addressed and must be construed objectively with reference to the language used in the order itself."

8. Having regard to this settled position of law, no importance can be attached to the subsequent clarification issued by the Government in Revenue and Forest Department, dated 3rd March, 1987. Besides this, the authority of the Revenue and Forest Department to issue the clarification is also questionable because the subject in question is dealt with by Social Welfare; Cultural Affairs; Sports and Tourism Department of the Government of Maharashtra, as can be seen from the Government Resolution dated 10th of September, 1985. Be that, as it may; calculations are not valid as they are not based on a rational theory. The factors, such as expenditure incurred, number of patrons etc. are not considered for calculating the actual profit. The profit earned by the exhibitor cannot be calculated on the basis of the rates for ticket sold. In fact, concession is given for screening the film because occupancy may be less than normal. As the very basis for calculation is not valid, contention of the petitioner that action of recovering the alleged excess amount of profit is not legal and valid, will have to be sustained. In the result, petition succeed. Rule is made absolute in terms of prayer Clauses (b) and (c). However, in the circumstances of the case, there will be no order as to costs.