(2004) 10 AHC CK 0114

In the Allahabad High Court

Case No : Writ Petition No.2280 (M/B) of 1993

Shri Ram Avatar Singh — APPELLANT

Vs

State of U.P.and Others — RESPONDENT

Date of Decision : 08-10-2004

Acts Referred:

Citation : (2004) 10 AHC CK 0114

Hon'ble Judges : Pradeep Kant, J and Rajiv Sharma, J

Final Decision : Allowed

Judgement

1. Sufficient ground has been shown for explaining the absence of the petitioner''s counsel on the date of default. The order dated 17.10.2000 is recalled. The writ petition is restored to its original number.

2. After restoration of the writ petition, since the matter is of the year 1992, we have proceeded to hear the case on merit, in view of the fact that affidavits have already been exchanged and the petition is ripe for hearing.

3. The State Government, with a view to give an encouragement and incentive for opening picture halls in the State so that the State may have more picture halls, notified a scheme under the Government Order dated 17.9.83, giving the benefit of grantinaid to such picture halls which were to be established in an area having a population more than 20 thousand but less than one lakh, as per the census of the year 1981. The grantinaid was available for the following terms: (I) for the first year 100% amount equivalent to the amount of entertainment tax payable by the cinema, as a result of exhibition of any film; (ii) for the second year, the amount was reduced to 75%, (iii) for the third year the amount was further reduced to 50%; and (iv) for the fourth year no such grantinaid was to be given. Later on another Government Order was issued on 21.7.86, by means of which the facility of grantinaid was extended for a period of five years in respect of those cinema halls, which were established in an area having a population of less than twenty thousand as per the census of 1981. This Government Order further said that the scheme/policy promulgated under earlier Government Order

dated 17.9.83 has not given encouraging response as there were practical difficulties and, therefore, it did not yield positive results of having sizable number of more picture halls and as such another scheme was notified by means of later Government Order. In this scheme for picture halls established in an area having population of less than twenty thousand were to get the benefit of grantinaid for five years at the given slabs, namely, 100% for the first and second year, 75% for the third year and 50% for the fourth and fifth year. The aforesaid Government Order and the benefits under the scheme notified therein were also made available to such permanent picture halls, who had already started taking benefit of the provisions of Government Order dated 17.9.83, subject to the condition that they would make the admission fee including entertainment tax not more than Rs.5/ and by doing so, they can also avail the benefit of grantinaid under the Government Order dated 21.7.86. The second condition was that such permanent cinema halls which have been established at a place where the population as per the census of 1981 is upto twenty thousand and which have already started taking the benefit of grantinaid in pursuance of the Government Order dated 17.9.83, would be allowed that benefit of grantinaid only for a period of four years. Rest of the provisions of the aforesaid Government Order are not relevant for the present controversy and, therefore, we do not mention the same.

4. The petitioner applied for being granted permission for constructing the permanent cinema hall at Kasba Bawatpur Ajitmal, AgraKanpur Road, Etawah. The necessary formalities, namely, submission of site plan and ownership proof were also fulfilled. The Entertainment Tax Commissioner, U.P. Lucknow granted the permission on 21.12.84 to construct the picture hall. The construction of picture hall was completed on 9.10.87, which was named as ''Raj Shakti Cinema''. The licence for exhibiting films etc. was issued on 25.1.88 under the provisions of Cinematograph Act, 1952 and since then the picture hall started running.

5. The petitioner was made to enter into an agreement in terms of the Government Order dated 17.9.83, which was entered into between the District Magistrate and the petitioner saying that the petitioner would be granted the benefits of grantinaid for a period of four years. The petitioner was granted the aforesaid benefit of grantinaid as per the Government Order dated 17.9.83 for a period of four years but when the petitioner claimed the benefit for the ffth year also, the term was not extended and he was informed that as per the agreement, he would be entitled the benefit of grantinaid for a period of four years only and that in view of the agreement entered into between the parties, he cannot claim the benefit for the fifth year and that the Government Order dated 21.7.86 would not be applicable in his case.

6. In the writ petition, the petitioner also asserted in Para 16 in a similarly situated cinema hall known as ''Krishna talkies'' in Jaswant Nagar, Etawah, the benefit of fifth years''s grantinaid has been given whereas the petitioner has

been discriminated. In the counter affidavit filed by the State, the only ground for not extending the aforesaid benefit of the Government Order dated 21.7.86 to the petitioner is that since the petitioner has signed the agreement for grantinaid for a period of 4 years only i.e. from 26.1.88 to 25.1.92, therefore, he is not entitled for the benefit of grantinaid for the fifth year. The counter affidavit further says that in case a cinema licencee fails to deposit the entertainment tax in due time, his licence can be suspended or revoked under Article 15(B) of U.P. Entertainment Tax & Betting Tax Act, 1979 and that since the petitioner had himself accepted and signed the scheme of grantinaid for a period of four years, therefore, he has no right to withhold the entertainment tax due from him prescribed by the law for the fifth year. In regard to the case of the petitioner that under similar circumstances ''Krishna talkies'' was given the benefit of grantinaid for five years, it has been stated by the State in the counter affidavit that the cinema licencee of Krishna Talkies had opted for the grantinaid scheme of five years and for this he had singed the grantinaid agreement for the period mentioned above, therefore, he has been given the benefit for the fifth year also.

7. In reply to the rejoinder affidavit filed by the petitioner, a supplementary counter affidavit has been filed, in which it has been stated by the State in Para 9 that in view of the provisions of Rule 5(5) of the Government Order dated 21.7.80, the petitioner''s representation dated 3.6.94 for claiming grantinaid for fifth year has been rejected as the said provision empower the Entertainment Tax Commissioner to issue order separately in this regard. It has been further stated that the Entertainment Tax Commissioner had requested the District Magistrate, Etawah to cancel the grantinaid given to the cinema and that the petitioner himself accepted not irregularities were found in cinema during the periof of grantinaid for which he was imposed penalty of Rs.2000/ which was deposited by him. This appears to be a fact made in the supplementary counter affidavit filed by the State for fustifying its action in not allowing the benefit of grantinaid for the fifth year.

8. The Government Order dated 17.9.83 laid a scheme for grantinaid in respect of the picture halls of the category to which the petitioner''s cinema hall belongs, for a period of four years but subsequently the State Government, on being convinced and satisfied that the earlier scheme did not yield desired result and has not been able to stimulate people to establish more cinema halls, virtually superseded/modified the said scheme by Government Order dated 21.7.86 by extending the said benefit for a period of five years, as per the conditions mentioned in the said Government Order. All the cinema halls which were yet to be started or were to be established, after the issuance of the aforesaid Government Order, were entitled for the benefit of grantinaid for a period of five years. For balancing the equities and also for giving an option to such permanent cinema halls, who had already started taking benefit of grantinaid as per the Government Order dated 17.9.83, an option was given to such cinema halls also to avail the benefit of the subsequent Government Order dated 21.7.86 and for that they were required to fix the admission fee inclusive of entertainment tax

not more than Rs.5/. The prohibitory part of the aforesaid Government Order dated 21.7.86 is that all those permanent cinema halls, which are established in an area having population upto twenty thousand and who have started taking facility/benefit of the Government Order dated 17.9.83, would be entitled for benefit of grantinaid only for four years as per the aforesaid Government Order dated 17.9.83.

9. So far extending the benefit of grantinaid to ''Krishna Talkies'', Jaswantnagar, Etawah for a period of five years and refusing the same benefit to the petitioner''s cinema hall is concerned, even if we do not accept the plea of discrimination and if it is treated to be not available to the petitioner, the fact still remains that under the Government Order dated 17.9.83, or under the Government Order dated 21.7.86, there was no option available to the cinema halls to opt for the scheme of facility of grantinaid for four years or five years. Neither of the two Government Orders did give any such option to the cinema halls or proprietors thereof, but they were entitled to have the said benefit for four years if they were governed by the Government Order dated 17.9.83 and were not to be allowed to claim the benefit of the subsequent Government Order dated 21.7.86, in view of the prohibition clause contained therein.

10. The scheme under the Government Order dated 17.9.83 was for a period of four years only whereas the said scheme was modified by Government Order dated 21.7.86 or so to say a new scheme was formulated in view of the later Government Order dated 21.7.86 for a period of five years. In case the cinema hall was covered exclusively by the Government Order dated 17.9.83 and the benefit of the Government Order dated 21.7.86 could not have been made available or could not be available to such cinema halls, the benefit could only be extended for a period of four years to the cinema halls but where the cinema hall opted for getting the benefit under the later Government Order dated 21.7.86 either by fixing the admission fee as prescribed or they did not fall within the prohibitory clause, then irrespective of the agreement between the parties, the said benefit has to be extended for a period of five years. There was no question nor there was any occasion for giving option for four years or five years by the cinema hall. The scheme which is available to a cinema hall by operation of law cannot be curtailed or reduced by any agreement between the parties, particularly when it is nonstatutory agreement, unless, of course, the scheme itself provide any such exception that the term of the benefit of the scheme would be subject to any such agreement, which otherwise has been entered into between the parties. We do not find any such clause in either of the two Government Orders and as a matter of fact, the agreement has been entered into in terms of the Government Order then prevailing for giving full effect to the scheme and to make the scheme effective and binding between the parties.

11. The petitioner though applied for permission to construct the cinema hall on 1.11.83 under the scheme of the Government Order dated 17.9.83 but after completion of construction of cinema hall, which stood completed on 9.10.87, he

was issued cinema licence, much after the issuance of Government Order dated 21.7.86 i.e. on 25.1.88. The exhibition of films thus, began on or after 25.1.88. Till the cinema hall started running and the films were exhibited, the question of availing the facility of grantinaid, either under the earlier Government Order or the later Government Order would not arise. The benefit of grantinaid under both the Government Orders provided grantinaid, equivalent to the amount of entertainment tax, which was to be paid in pursuance of exhibition of a film in cinema hall. For the first year it was shown as 100%, the percentage decreased in the Government Order dated 17.9.83 as well as in the Government Order dated 21.7.86 for subsequent years. In this background when the Government Order dated 21.7.86 says that those permanent cinema halls who have started taking the benefit of the grantinaid in terms of the Government Order dated 17.9.83 would not be entitled for having benefit of five years and would be entitled only for four years, it would necessarily mean that such permanent cinema halls should have started taking the benefit of grantinaid prior to the issuance of the Government Order dated 21.7.86. From the facts on record, it is clear that construction of the cinema hall was itself completed on 9.10.87 i.e. after the issuance of the Government Order dated 21.7.86 and that it was granted cinema licence for exhibiting films on 25.1.88. It, therefore, cannot be presumed that the petitioner''s cinema hall started taking benefit of the terms of the Government Order dated 17.9.83 and was taking such advantage when the subsequent Government Order dated 21.7.86 was issued. The Government Order dated 21.7.86 does not put any embargo or bar nor excludes the applicability of the said scheme to the cinema halls which have been constructed after the issuance of the aforesaid Government Order and even if it was constructed prior to the issuance of the Government Order but had not started taking benefit of grantinaid under the Government Order dated 17.9.83.

12. The additional ground for refusing to allow the benefit of fifth year grantinaid to the petitioner, as given in the supplementary counter affidavit that there were certain complaints against the petitioner''s cinema hall and the Entertainment Tax Commissioner requested the District Magistrate to cancel the grantinaid given to the cinema and for which a penalty of Rs.2000/ was deposited by the petitioner appears to be an after thought, it wholly being off the point.

13. The petitioner was initially issued a notice dated 16.2.93 (Annexure6 to the writ petition) wherein it has been specifically said that the matter regarding grantinaid for the fifth year, namely, for the period commencing from 25.1.92 to 24.1.93 was referred to the Entertainment Tax Commissioner, who vide its D.O. letter dated 5.2.93 has intimated that no case for such benefit being extended to the petitioner is made out as he was granted licence under the Government Order dated 17.9.83. After mentioning the aforesaid fact, the letter required the petitioner to deposit the amount mentioned therein, failing which the same was to be recovered as arrears of land revenue. The petitioner made representation against the aforesaid demand, which is said to have been decided by the Entertainment Tax Commissioner but no such order has been brought on record.

Shelter has been taken of Clause 5(5) of the Government Order dated 21.7.86 for showing authority of the Entertainment Tax Commissioner to pass such an order.

14. We have gone through the aforesaid clause and we find that it does not say anywhere that if any irregularity has been found, the grantinaid shall be cancelled. It only says that, if necessary, the Entertainment Tax Commissioner may pass separate orders under the U.P. Entertainment Tax & Betting Tax Act, 1979. Even otherwise neither the irregularities have been mentioned in the supplementary counter affidavit not they have been brought on record. Further, it appears that for the irregularities committed, the petitioner has already been find and he has already deposited the penalty. This amount has not been mentioned in the notice, by means of which his prayer for giving the benefit for the fifth year was rejected nor under the Government Order, such an order could be passed.

15. We, therefore, do not find any reason for depriving the petitioner of the benefit under the Government Order dated 21.7.86. The notice of demand, contained in Annexure6 to the writ petition is liable to be quashed and is hereby quashed. The petitioner would be given the benefit of the Government Order dated 21.7.86 and consequently he is entitled and would also be provided the benefit of grantinaid for the fifth year also.

16. The writ petition is allowed. No order as to costs.

(Petition allowed)

