

(1996) 07 AHC CK 0075

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 893 of 1995

Shyam Palace,Dhata

APPELLANT

Vs

District Magistrate,Fatehpur

RESPONDENT

Date of Decision : 04-07-1996

Acts Referred:

Uttar Pradesh Entertainments and Betting Tax Act, 1979 — Section 15(1), 15(2)

Citation : (1996) 07 AHC CK 0075

Hon'ble Judges : A.P.Misra, J and S.N.Tiwari, J

Final Decision : Allowed

Judgement

A.P. Misra, J.—In view of the exchange,, of affidavits and in accordance with the Rules of Court, the present petition is being disposed of finally at the stage of admission.

2. The petitioner seeks quashing of order dated 2771995 (Annexure3 to the writ petition) by virtue of which the District Magistrate has suspended the Cinema licence of the petitioner under Section 15 of the U.P. Entertainment and Betting Tax Act, 1979.

3. The petitioner is, a licensee under the Cinematograph Act, 1918 under which he was running the same. Earlier the petitioner came to this Court against the rejection of his application for compounding of payment of the Entertainment Tax in accordance with the provisions of Section 3 read with Rule 24A of 1981. Thereafter the impugned noticecumorder dated 2771994 (Annexure3) was passed by the District Magistrate to show cause as to why the licence be not suspended under Section 15(1) of the Act. Further for the reasons recorded thereunder the proviso to S. 15(2) the licence has been suspended with immediate effect. The order refers to the inspection made at 1.30 p.m. and records the irregularity found therein. Inspection records, the manager/owner or any responsible persons absent, on records being summoned the same were not produced & 13 persons were found without ticket.

4. The main contention of the petitioner is that exercise of powers for suspending the petitioner's Cinema licence under proviso to Section 15(2) of the aforesaid Act was illegal as condition to exercise the power under it does not exist.

5. In the counteraffidavit stand is almost on the same line, in consonance with inspection note and the notice given to the petitioner.

6. The short question for consideration is whether the exercise of power for suspending the licence for running the cinema under proviso to Section 15 (2) could be exercised on the facts and circumstances of the case. For proper appreciation of the matter Section 15 of the Act is quoted hereinunder:

"15. Suspension or revocation of licence or permission for entertainment. (1) Notwithstanding anything contained in any other law and without prejudice to the order provisions of this Act, the District Magistrate or the Commissioner, may, be order, revoke or suspend by way of punishment for a period not exceeding three months, any permission or licence granted for an entertainment under any other law for the time being in force if he is satisfied that the proprietor has:

(a) admitted any person to any place of entertainment without (payment of tax), or

(b) failed to pay the tax due from him without the time prescribed, or

(c) fraudulently evaded the payment of any tax due under this Act, or

(d) obstructed any officer in carrying out inspection, search or seizure of records, or

(e) failed to produce the records required for inspection by any officer carrying out an inspection under this Act, or

(f) contravened and other provisions of this Act or the rules made thereunder or any order or direction issued under any such provision :

Provided that where either of the aforesaid officers has commenced a proceeding under this subsection the other of them shall have no jurisdiction to proceed subsequently in respect of the same matter and any such subsequent proceeding, if commenced, shall be of no effect and shall be dropped.

(2) No order to revoke or suspend any permission or licence shall be made under subsection (1) without giving the holder of the licence or permission a reasonable opportunity of being heard:

Provided that where the District Magistrate or the Commissioner is of the opinion that the object of the action proposed to be taken would be defeated by the delay he may, while or after communicating to the holder of the licence or permission the grounds on which the action is proposed, pass an interim order suspending the permission or licence in the meantime.

(3) Any person aggrieved by an order revoking or suspending any permission or

licence under this section may, within fifteen days from the date of communication of such order prefer an appeal to the State Government in such manner as may be prescribed and the order of the appellate authority shall be final.

(4) Where any permission or licence granted for an entertainment has been revoked or suspended under this section, the District Magistrate or, as the case may be, the Commissioner shall have the power to prevent such entertainment and may for this purpose use such minimum force as he may consider necessary in the circumstances of the case."

7. Subsection (1) of Section 15 of the Act empowers the District Magistrate or the Commissioner to revoke or suspend by way of punishment for a period not exceeding three months any permission or licence granted for entertainment under any other law for the time being in force. The reasons for suspension is specified under the same subsection under its subclauses (a) to (f).

8. The proviso to subsection (2) of this section further empowers the said authorities to suspend the licence immediately as interim measure but only if the object of the action proposed would be defeated by the delay. In order to defend an order under this proviso merely existence of conditions mentioned in subclauses of Section 15 (1) is not sufficient. The learned Standing Counsel defends the order of suspension on the ground as contained in aforesaid subsection namely, nonproduction of record before the authority concerned during inspection and admission of persons without ticket. However, this by itself would not give to the authority power for immediate suspension. The proviso to subsection (2) is not identical as subsection (1). In one viz. Section 15(1) suspension is after considering the reply to show cause while other as immediate measure.

9. Learned Standing Counsel submits when District Magistrate goes for inspection and if one runs away with the record coupled with admitting persons without ticket was sufficient for suspending the licence as interim measure. This submission is misconceived. Firstly, no such stand either hi the counteraffidavit, or in the impugned notice/order that the petitioner or any person ran away with the record. Only thing mentioned is that no responsible person was available for showing the record. This by itself in our considered opinion cannot be construed to empower the District Magistrate to suspended the licence under the proviso to subsection (2).

10. Suspension of licence though is provided in both subsection (1) and subsection (2). Subsection (1) is by way of punishment after enquiring opportunity, while proviso to subsection (2) only to salvage from defeat of the object of the action proposed. For this there has to exist some material on record.

11. In the present case there is nothing in the counteraffidavit or in the submission on which such a conclusion could be drawn. Mere existence of power does not mean exercise of power or mechanically exercising that power. This

additional power is entrusted to check evasion of tax where unless suspension orders is passed and continued evasion cannot be checked. Such power has to be exercised with restraint with full awareness of the existence of the conditions mentioned therein. One cannot, take away one's valuable right casually, mechanically or illegally. Accordingly in the absence of any material the impugned order suspending the licence of the petitioner by interim measure by means of order dated 2771995 (Annexure3 to the writ petition) is not sustainable and is accordingly quashed. However, this is without prejudice to the rights of the respondents to proceed and conclude the inquiry, if any pending in accordance with law under Section 15 (1) of the Act.

12. With the aforesaid observations this petition is allowed with costs.