(2010) 12 AHC CK 0009

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 389 of 2006

Sita Ram Tekariwal APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 10-12-2010

Acts Referred:

Uttar Pradesh Entertainments and Betting Tax Act, 1979 — Section 12

Citation : (2011) 2 ADJ 115 : (2011) 6 RCR(Civil) 2553 : (2011) 42 VST 322

Hon'ble Judges : Yatindra Singh, J;Prakash Krishna, J

Bench : Division Bench

Judgement

1. The Petitioner is a licensee under U.P. Cinema Regulation Act 1955 and is entitled to exhibit motion films in his Cinema Hall.

2. A producer of Bhojpuri Film approached the Petitioner for shooting a part of a feature film in his Cinema Hall.

3. The Petitioner sent an application before the District Magistrate, Gorakhpur/ Licensing Authority informing that no shows of the film would be held on 25.5.2005 as the film was to be shot in the Hall.

4. No reply of the aforesaid application was received by the Petitioner from the District Magistrate, Gorakhpur. The film was shot and no shows were held on 25.5.2005.

5. The District Magistrate issued notices dated 9.11.2005 informing the Petitioner asking him to show cause under U.P. Entertainment and Betting Tax Act 1979 (the Act) why the loss in Entertainment Tax be not recovered from him and penalty be imposed for not holding any show.

6. The Petitioner submitted his reply on 15.11.2005. However, the District Magistrate, Gorakhpur rejected the same by his order dated 21.2.2006 and imposed the damages assessed at Rs. 16,388/- for loss of Entertainment Tax and imposed penalty of Rs. 5000. Hence, the present writ petition.

7. We have heard Shri Govind Krishna, learned Counsel for the Petitioner and the learned standing counsel for the Respondent.

THE DECISION

8. The Director of Film ''Bhandu'' issued a policy decision of 2001 requiring the authorities to provide all facilities for promotion of shooting the films in U.P. Subsequently, he also sent a letter dated 22.7.2003 requesting the District Magistrate to provide facilities for shooting the films in U.P.

9. The counsel for the Petitioner submitted that:

The Petitioner had permitted the shooting of the film in his picture hall in pursuance of the aforesaid policy and the letter of the Director;

It was the request of the State Government;

The District Magistrate is estopped from penalising or imposing any damage for loss of entertainment tax.

10. It is not necessary to decide the submissions of the Petitioner as in our opinion the writ petition is liable to be allowed on the ground that there was no jurisdiction to impose damage or the penalty.

11. The District Magistrate passed the order u/s 12 of the Act. It is titled as ''Assessment of Tax". It provides that an assessment of entertainment tax can be made and penalty may be imposed if the Commissioner or the District Magistrate is satisfied that the proprietor of an entertainment has:

failed to give information; or

failed to prepare or to submit true and full returns; or

used or possesses duplicate tickets; or

fraudulently evaded or attempted to evade, the payment of tax due in any manner.

12. A reading of Section 12 indicates that the order u/s 12 of the Act can be passed provided that any entertainment was held and the proprietor was concealing entertainment tax by providing incorrect information. In case no entertainment was held then no assessment can be made u/s 12 of the Act.

13. The penalty u/s 12 of the Act can be imposed only if assessment can be made. If the assessment u/s 12 of the Act cannot be made then no penalty can be imposed.

14. The standing counsel also could not point out any provision under which damages for loss of entertainment tax can be imposed.

15. It is admitted case of the parties that no shows or entertainment was held on 25.10.2005. In view of this, neither any assessment (or any damage) could

assessed nor any penalty could be imposed upon the Petitioner.

CONCLUSIONS

16. Our conclusions are:

(a) In case no entertainment was held then Section 12 is not applicable.

(b) Neither any damage for loss of entertainment nor any penalty could be imposed u/s 12 of the U.P. Entertainments and Betting Tax Act, 1979.

17. In view of above, the order dated 21.2.2006 is illegal and is quashed. The writ petition is allowed.