(1999) 01 MP CK 0007

In the Madhya Pradesh High Court

Case No : M.P. No. 746 of 1986 (J)

State of M.P. APPELLANT

Vs

M/S Triyug Talkies and Another RESPONDENT

Date of Decision : 05-01-1999

Acts Referred:

Madhya Pradesh Entertainments Duty and Advertisements Tax Act, 1936 — Section 4D
Madhya Pradesh Land Revenue Code, 1959 — Section 50

Citation : (2000) 1 MPJR 64

Hon'ble Judges : D.M. Dharmadhikari, J

Bench : Single Bench

Advocate : V. Awasthy, Dy. A.G, for the Appellant; Mr. Abhay Sapre, for the Respondent

Final Decision : Dismissed

Judgement

D.M. Dharmadhikari, J.

By this petition under Article 227 of the Constitution of India, the State of Madhya Pradesh through Deputy Commissioner of Excise, Indore seeks quashing of the order dated 16th July, 1984 passed by the Board of Revenue, Gwalior on the main ground that the Board of Revenue has no jurisdiction to exercise any revisional powers u/s 50 of the M.P. Land Revenue Code (for short ''the Code'') against an order passed in appeal by the Revenue Commissioner u/s 4D of the M.P. Entertainments Duty and Advertisement Tax Act, 1936 (hereinafter referred to as ''the Act'').

The nature of challenge made by the State of Madhya Pradesh to the revisional order of the Board of Revenue would be clear from the following facts: The Respondent No. 1, M/s Triyug Talkies, is a partnership firm running a Cinema Theatre. After surprise check of the cinema by District Excise Officer, Khandwa a show cause notice dated 3.1.1979 was issued to the management of the threatre alleging evasion of advertisement tax and proposing imposition of tax and penalty.

The management of the cinema theatre denied the allegations by submitting a reply. Thereafter, the Collector, Khandwa as District Excise Officer passed order dated 18.5.1979 imposing a sum of Rs. 12,239.36 as advertisement tax, Rs. 3,739.50 as additional tax and Rs. 30,000/- as penalty in exercise of powers u/s 4-C of the Art

Aggrieved by the imposition of above amount of tax and penalty, the management of the theatre preferred an appeal u/s 4-D of the Act to the Commissioner of Revenue Division who by order dated 30.12.1982 dismissed the appeal and confirmed the demand of tax and penalty.

Against the appellate order of the Revenue Commissioner, the owner of the theatre preferred a revision u/s 50 of the Code to the Board of Revenue which by the impugned order dated 16th July, 1984 has been allowed and the tax and penalty imposed has been set aside with substitution of penalty in the sum of Rs. 500/- only for alleged non-maintenance of the accounts.

Shri Vivek Awasthy, Deputy Government Advocate, appearing for the State contends that under Sub-section (1) of Section 4-D of the Act, the decision of the Commissioner in appeal has been expressly stated to be final and, therefore, no revision under the provisions of the Code was tenable before the Board of Revenue which illegally usurped jurisdiction to interfere with the order of the Taxing and the Appellate Authorities.

Shri Abhay Sapre, learned Counsel appearing for the management of the theatre, in reply submits that provisions of Sub-section (1) of Section 4-D bars any further appeal but not a revision under the Code. He submits that the power of revision of the Board of Revenue over subordinate revenue officers is not taken away by any express provision of the Act and, therefore, the Board of Revenue rightly invoked its revisional jurisdiction u/s 50 of the Code. His alternative submission is that if this Court comes to the conclusion that the Board of Revenue has no revisional jurisdiction over the appellate orders passed u/s 4-D of the Act, the management of the threatre as Respondent be permitted to assail the orders of the Taxing Authority and the Appellate Authority on merit. It is submitted that in proceedings 227 of the Constitution of India, when the entire case is before this Court, the owner of the theatre even as Respondent dan be heard against the two impugned orders passed under the Act and can be granted relief for which the Respondent has paid Court fees and made a specific prayer for relief.

Taking up first the question of want of jurisdiction of the Board of Revenue, raised on behalf of the State, it would be necessary to examine the relevant provisions of the Act and the Code. The provisions of Sections 4-C and 4-D of the Act read as under:

4-C. Power to impose penalty - If on an inspection of a place of entertainment, or after examination of the records, accounts and stocks of stamps maintained by a proprietor, the Excise Commissioner or any other officer as amy be authorised by the State Government in this behalf, comes to the conclusion that entertainments duty or advertisement tax payable under this Act has been evaded by the proprietory, he may, after giving the proprietor a reasonable opportunity of being heard, assess to the best of his judgment the duty of tax payable by the proprietor for a period not exceeding thirty days immediately preceding as if the evasion substituted for the whole of such period and he may direct that the proprietor shall pay by way of penalty in addition to the amount of duty or tax so assessed, as the case may be, a sum equal to half that amount for the first such evasion in a calender year, and a sum not exceeding twice but not less than half that amount for the second of subsequent evasion in that year.

4-D. Appeal -(1) Any proprietor aggrieved by an order made u/s 4-C, may, within such time as may be prescribed, prefer an appeal to the Commissioner of the Revenue Division concerned and the decision of the Commissioner on such appeal shall be final.

(1 -A). No appeal against an order of assessment of duty or tax and penalty under Sub-section (1) shall be admitted unless -

(i) if for the amount specified in column (1) of the table below the duty or tax and penalty has been deposited in the proportion specified in the corresponding entry in column (2) thereof-

TABLE

Amount

Porportion of duty of tax and penalty

(1)

(2)

Where the amount of the duty or tax and penalty does not exceed one thousand rupees.

The full amount of duty or tax and penalty.

Where the amount of the duty or tax and penalty exceeds one thousand rupees.

One thousand rupees or one-third of the amount of the duty or tax and penalty, which is higher.

(ii) the documentary evidence of such deposit has been filed with the appeal.

(2) The provisions of the Madhya Pradesh Land Revenue Code, 1959 (No. 20 of 1959), and the rules made thereunder, so far as they relate to appeal shall apply to the appeal preferred under Sub-section (1) as they apply to the appeal to the Commissioner of Revenue Division under the said Code.

What is to be noticed from the provisions contained in the above two sections is that the order of the Excise Commissioner or any other authorised officer of the

State Government passed u/s 4-C of the Act is subject to appeal before the Commissioner of the Revenue Division concerned. It is expressly stated under Sub-section (1) of Section 4-D of the Act that "the Decision of the Commissioner on such appeal shall be final."

On behalf of the State much emphasis has been laid on the finality clause in relation to the appeal contained in Sub-section (1) of Section 4-D of the Act. It is contended that the above finality clause is a clear intention expressed by the legislature that there would be no further appeal or revision. Under Sub-section (2) of Section 4-D, the provisions of the Code and the Rules framed thereunder have been adopted for the limited purpose of regulating the procedure of the appeal under the Act. On behalf of the State, therefore, it is submitted that the Board of Revenue could not have invoked revisional jurisdiction u/s 50 of the Code.

It is necessary now to examine the provisions of the Code as the Board of Revenue has exercised revisional powers u/s 50 of the Code. The Code is general law and creates hierarchy of Revenue Courts. The jurisdiction of the Revenue Courts can be invoked for orders passed under the Code or any other enactments as expressly authorised by the Code. u/s 11 there are given the various classes of Revenue Officers which include at the top in the hierarchy the Commissioner of the Revenue Division and Additional Commissioners down to Naib Tahsildars and Assistant Superintendents of Land Records. Undoubtedly, therefore, Commissioner is a Revenue Officer as mentioned in Section 11 of the Code. The Board of Revenue and Revenue Officers are Revenue Courts while exercising powers under the Code or any other enactment for the time being in force to enquire into or decide any question arising between State and any person or between parties to any proceedings. This provision is contained in Section 31 and may be reproduced:

31. Conferral of Status of Courts on Board and Revenue Officers -The Board or a Revenue Officer, while exercising power under this Code or any other enactment for the time being in force to enquire into or to decide any question arising for determination between the State Government and any person or between parties to any proceedings, shall be a Revenue Court (emphasis supplied)

The power of revision is contained in Section 50 of the Code and there is no dispute that the order of the Revenue Commissioner under the Code is revisable by the Board of Revenue for the purpose of examining the legality, regularity and propriety of the proceedings and the orders of the subordinate Revenue Authority. The language of Section 50 (1) of the Code is worth noticing and is reproduced hereunder to show that revisional power is exercisable against order and proceedings of a Revenue Officer:

50. Revision - (1) The Board or the Commissioner or the Settlement Commissioner or the Collector or the Settlement Officer may at any time on its/ his motion or on the application made by any party for the purpose of satisfying

itself/himself as to the legality or propriety of any order passed by or as to the regularity of the proceedings of any Revenue Officer subordinate to it/him call for and examine the record of any case pending before, or disposed of by such officer, and may pass such order in reference thereto as it/he thinks fit.... (emphasis supplied)

Section 44 of the Code providing for appeal and Section 50 providing for revision as also Section 51 providing power to review are contained in Chapter v. of the Code and the word "order" for the purpose of appeal, revision or review has been given a legal connotation or meaning by Section 56 of the Code, which reads thus -

56. Construction of Order - In this Chapter, unless the context otherwise requires, the expression "order" means the formal expression of the decision given by the Board or a Revenue Officer in respect of any matter in the exercise of its/his powers under this Code or any other enactment for the time being in force, as the case may be. (emphasis supplied)

The above definition of the word "order" in the Code would make it clear that it would include orders passed under the Code or "any other enactment for the time being in force".

The power of revision u/s 50 of the Code, therefore, can be exercised not only against orders of Revenue Officers passed under the Code, but also against any orders passed under any other enactment for the time being in force. That is the legal effect of the provisions contained in Section 50 read with Section 56 of the Code.

In this respect, it is necessary to see and distinguish the language differently used in Section 44 providing for an appeal and Section 50 (1) providing for a remedy of revision. Section 44 (1) opens out with following language:

44. Appeal and appellate authorities -(1) Save where it has been otherwise provided, an appeal shall lie from every original order under this Code or the rules made thereunder.....

(underlining for emphasis)

From the above provisions contained in Section 44 it is clear that an appeal shall lie from every ''original order under this Code''. If this provision is compared with Section 50 (1) of the Code, it is clear that Section 50 does not restrict the power of revision only against the orders passed under the Code or the rules framed thereunder. u/s 50 (1) the language employed is that the Board of Revenue or Commissioner or Settlement Commissioner or Collector or Settlement Officer may at any time suo motu or on the application made by any party call for and examine the record of any proceedings of any Revenue Officer subordinate to it. The revisional power of the Revisional Authority u/s 50 of the Code, therefore, is not restricted to orders passed under the Code but it also extends to orders passed by any Revenue Officer under any enactment for the time being in force.

This is made doubly clear by defining and construing the word ''order'' by giving a wide meaning u/s 56 of the Code reproduced above.

From the aforesaid examination of the provisions of the Code, it is amply clear that orders passed by a Revenue Officer in exercise of power under the Code or any other enactment for the time being in force is subject to revision u/s 50 of the Code.

The only other argument which now needs decision is whether the finality given to the order passed in appeal u/s 4-D (1) of the Act would bar remedy of revision u/s 51 of the Code. There appears to be sufficient force in the contention advanced on behalf of the management of the theatre that the finality given to the appeal under Sub-section (1) of Section 4-D of the Act read with Sub-section (2) of the said Section is with intention to bar any further appeal as the provisions of the Code provides for a second appeal as well. The remedy of revision is a sort of power of superintendence. The revisional power is conferred on a higher authority to keep the lower authorities within bounds of their jurisdiction. The powers of appeal and revision are entirely different and has different scope and effect, well recognised in law. Where a provision contains a finality clause with relation to an appellate order, it cannot be held without intention expressed to the contrary in any other provisions of the Act, that the general power of the higher Courts of revision and superintendence is taken away. For the purpose of the Act, the procedure with regard to the remedy of appeal has been borrowed from the Code by Sub-section (2) of Section 4-D of the Act which is in the nature of a legislation by reference. It appears that since the procedure of appeal provided under the Code was incorporated by reference under Sub-section (2) of Section 4-D, it became necessary for the legislature to provide a finality clause to the appellate order so that the orders of the Taxing Authority and the Appellate Authority under the Act may not be made subject to further appeal. The finality clause under Sub-section (1) of Section 4-D read with Sub-section (2) thereof does not give a clear indication of barring of remedy of revision under the Code and as such barring of revisional remedy cannot also be inferred from any other provision in the Act or the Code.

I am supported in my view by the following part of the commentary in the Principles of Statutory Interpretation by Justice G.P. Singh, 6th Edition, Syn. 3, at Page 483, which is based on decisions of the AIR 1931 149 (Privy Council) and of the Supreme Court in State of Orissa and Others Vs. Arakhita Bisoi, and Chhaganlal v. Municipal Corporation, Indore (AIR 1977 1555):

The word ''final'' has been interpreted to mean ''without appeal''. In India the High Courts, apart from exercising supervisory powers under the Constitution, exercise a similar power u/s 115 of the Code of Civil Procedure, 1908 over all subordinate courts. Even this power of revision u/s 115, which can be excluded by legislative enactments, is construed as not readily excluded except by express provision to that effect. Thus, if a special Act while conferring power on a subordinate Court enacts that the decision rendered by such Court shall be final, that will only be effective in taking away a remedy by way of appeal but not a remedy by way of revision u/s 115. But if the finality clause is associated with the expression ''shall not be questioned in a court of law except as otherwise provided in the Act'', the remedy of revision u/s 115 has to be taken as excluded. And in a particular context the words ''subject to an appeal the order shall be final'' may also exclude a general remedy of revision.

The author has also referred to the decision of the Supreme Court in Yogendra Prasad Vs. Addl. Registrar, Co-op. Societies, Bihar and others, . In that case, the provisions contained in Section 48(9) provided that subject to the orders of the Registrar on appeal or review a decision given in a dispute transferred or referred under Clauses (b) and (c) shall be final. Section 56 of the said Act conferred a general power of revision on the Registrar to be exercised suo motu or on an application by an aggrieved party in relation to orders passed by any subordinate officer as his delegate. Construing the language of the above provisions of the said Act, the Supreme Court held that the finality attached to the orders does not take away revisional powers of the higher authority. See -the pertinent observations of the Supreme Court in construing the provisions of the Bihar Act which are as follows:

Relying upon the language in Sub-section (9) of Section 48 "save as expressely provided in this section", the Division Bench construed that the appellate order of the Deputy Registrar passed u/s 48 (6) was otherwise provided and so was not amenable to revision u/s 56. The learned Judges construed that since the appellate order shall be final, the effect of language under Sub-section (9) of Section 48 was to exclude the revisional jurisdiction of the Registrar u/s 56. In addition, the Division Bench also construed that the Registrar himself referred the dispute to the Asstt. Registrar and any person exercising the power of the Registrar in this behalf is to be in the parameters of his delegate and that, therefore, the Regisrar himself cannot revise his own order u/s 56. We find it difficult to approve the ratio of the High Court. At the cost of repetition we point out that Section 6, Sub-section (1) and Sub-section (2) (a) make a distinction between "the Registrar" and "a person exercising powers of the Registrar". Sub-section (4) further amplifies the exercise of the power of the Registrar by the Additional Registrar as his delegate. That apart, it is clear that the Registrar is the final supervisory authority over the subordinate officers exercising the powers or performing the duties under the Act. The language in Section 56 was couched very widely without being hedged with any limitation like the revisional powers u/s 115, Code of CPC or the similar language used in sister Acts in some other State like A.P. The reason appears to be obvious. The order of the Dy. Registrar by language of Sub-section (6) of Section 48, undoubtedly shall be final. We are aware that when the legislature gives "finality" to an order, it is normally not open to revision. But still it must be construed in the light of the scheme of the Act, its operation and resultant effect. The language in Section 56 is no hedged with any limitation of the finality in Sub-section (6) of Section 48. Thus we hold that the revisional power u/s 56 is independent of the appellate powers u/s 48 (6). The later is amenable to revision by the Registrar. The ratio of the Division Bench in Din Dayal Singh Vs. The Bihar State Co-operative Marketing Union Ltd., is, therefore, not good law.

In the considered opinion of this Court, therefore, the Board of Revenue has revisional jurisdiction over the appellate orders passed u/s 4-D of the Act and the challenge to the jurisdiction of the Board of Revenue on behalf of the State cannot be accepted.

The learned Deputy Government Advocate also made some attempt to assail the revisional order of the Board of Revenue on merits. It is submitted that when there were violations of the provisions of the Act and Rules found in surprise check of the theatre showing intention to evade tax on the part of the management of the theatre, the Board of Revenue had no jurisdiction to interfere in the well reasoned orders of the Taxing Authroity and of Revenue Commissioner as appellate authority.

I have looked into the order of the Board of Revenue, I find that the Board of Revenue has examined the entire nature of the action taken and the material on record to come to a conclusion that what at the worst found against the management of the theatre was lapse of maintenance of accounts. It also found that there was no other violation of law to show deliberate intention to evade tax. The Board of Revenue, therefore, found that imposition of exhorbitant penalty was wholly uncalled for. The revisional power conferred on the Board of Revenue u/s 51 of the Code is larger than normal revisional power. The Board of Revenue is empowered to examine the legality, regularity and propriety of the orders and proceedings of the lower Revenue Authority. The Board of Revenue has re-examined the whole matter to interfere and this Court under Article 227 of the Constitution of India cannot substitute its own view for the one taken by the Board of Revenue.

As discussed above, I have taken a view that the Board of Revenue was competent to invoke its revisional jurisdiction under the Code and that the order is also not liable to be interfered on merits. Therefore, I am not required to consider the alternative submission made on behalf of the management of the theatre as Respondent for granting relief against the two orders of the Taxing Authority and the Appellate Authority passed under the Act.

Consequent to the above discussion, the petition fails and is hereby dismissed, but, in the circumstances, without any order as to costs. The amount of security, if any deposited, be refunded to the Petitioner.

