(2009) 11 AHC CK 0249

In the Allahabad High Court

Sunil Kumar and Another APPELLANT

Vs

State of U.P. and Another RESPONDENT

Date of Decision : 03-11-2009

Acts Referred:

Citation : (2010) 30 VST 393

Hon'ble Judges : Prakash Krishna, J;Abhinava Upadhya, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard Shri K.M. Garg, learned Counsel for the petitioner and Shri Avinash Tripathi, learned Counsel for the Revenue. The petitioner applied for construction of cinema hall in town area Goverdhan, District Mathura, which has population of less than twenty thousand. After fulfilment of the requisite formalities, regarding finalisation of site plan, sanctioning of map and documents regarding ownership of the land, etc., the Prabhari Adhikari, town area vide its order dated April 6, 1987 granted permission for the aforesaid construction. The petitioner also applied for necessary directions to raise construction of the cinema hall before the licensing authority, i.e., District Magistrate under Rule 3 of the U.P. Cinematography Rules, 1951. Certain queries were made by the District Magistrate regarding ownership, etc., and the matter was referred to the State Government. In the meantime, the petitioner undertook the construction in accordance with approved map, etc., and applied for licence. In the meantime, certain amendments came in the Cinematography Rules itself, namely, Rule 39A was amended and Rule 44 was inserted by notification dated April 27, 1989. By these amendments, it was provided that the requirement of Rule 3(3) would be deemed to have been complied with if the person, in absence of permission as contemplated in Rule 3(3), has raised any construction pays Rs. 50,000 as composition charges.

2. The petitioner in view of the aforesaid provision, deposited a sum of Rs. 50,000 through a challan in the State Bank of India, Mathura on May 18, 1989.

On October 16, 1989, the petitioner also applied for the licence from the Entertainment Tax Department. It is also relevant to point out that a promotion scheme was launched by the Government under which certain categories of cinema halls were exempted from payment of entertainment tax. According to the learned Counsel for the petitioner, the petitioner falls within the said category. The petitioner also applied for exemption from payment of entertainment tax under the said promotion scheme as well as exemption of the requirement of Rule 3(3) of the Cinematograph Rules, 1951, but the District Magistrate as well as the State Government passed an order to the effect that the petitioner will be granted exemption from the requirement of Rule 3(3) of the Rules, 1951, only if he files an agreement that he will not claim the benefit under the said promotion scheme.

3. According to the petitioner once the composition charge of Rs. 50,000 was accepted by the authorities, the requirement of Rule 3(3) of the Rules, 1951, stood automatically waived and the petitioner ought to have been given the relevant licence. The petitioner had no option, but to challenge the aforesaid order by filing the Civil Misc. Writ Petition No. 20418 of 1989 before this Court. This Court vide its order dated January 23, 1990 granted an interim order to the authorities to dispose of the application of the petitioner for grant of licence without requiring him to fulfil the conditions of filing the agreement for not claiming the benefit under the said promotion scheme.

4. According to the learned Counsel for the petitioner, the benefit of the promotion scheme was not allowed to the petitioner and entertainment tax was recovered from him. In the meantime, the petitioner was also granted licence, but he was not allowed the benefit of the exemption under the said promotion scheme. The aforesaid writ petition came to be dismissed in default on May 18, 1999. It appears that at some stage in the aforesaid writ petition, the petitioner enjoyed interim order in his favour from depositing the entertainment tax. Upon restoration, the petitioner was required to deposit the entire tax amount of Rs. 4,60,969.68 which was deposited, but subsequently, the writ petition itself was dismissed vide order dated May 4, 2005 with liberty to petitioner to file fresh writ petition, if any cause of action survived.

5. The present writ petition has been filed since the cause of action still surviving as the petitioner have not been given the benefit of the promotion scheme. According to the learned Counsel for the petitioner, the construction stood regularised and the requirement of Rule 3(3) of the Cinematograph Rules, 1951, stood complied with, the moment, the petitioner deposited Rs. 50,000 as composition charges, which was for this very purpose, and therefore, he was entitled for the benefit of exemption from payment of entertainment tax under the said promotion scheme.

6. A counter-affidavit has been filed in which the same technical stand has been taken that since the permission for starting the construction was not obtained, therefore, the petitioner was not entitled. However, in paragraph No. 19 of the

counter-affidavit, it has been admitted that the petitioner has deposited Rs. 50,000 as composition charges. Since composition fee was paid and accepted, any irregularity that may have been committed stood regularised. Therefore, only on this account, the benefit of promotion scheme cannot be denied to the petitioner.

7. In view of the aforesaid facts and circumstances, the writ petition deserves to be allowed and is allowed. The impugned order dated September 11, 1989 (annexure 15) and the consequential orders are hereby quashed. However, the authorities are at liberty to pass fresh orders in accordance with law, but the benefit of the said exemption from payment of tax scheme shall not be denied to the petitioner only on account of the fact that the cinema house was constructed without obtaining prior permission of the concerned authorities, if for the said purpose he has deposited Rs. 50,000 as composition fee.

8. It is further directed that if it is found that the petitioner is entitled for the benefit of the promotion scheme, he shall be allowed the same forthwith, and his claim for refund of the tax already deposited, shall be considered and disposed of within a period of two months from the date of production of a certified copy of this order.

9. Subject to the aforesaid observations, the present writ petition stands allowed.

