
(1992) 09 AHC CK 0053

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 851 of 1992

Tilak Chitra Mandir and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 09-09-1992

Acts Referred:

Constitution of India, 1950 — Article 134
Evidence Act, 1872 — Section 115

Citation : AIR 1993 All 30

Hon'ble Judges : D.S. Sinha, J;A.N. Gupta, J

Bench : Division Bench

Advocate : V.M. Sahai, for the Appellant; S. C., for the Respondent

Final Decision : Dismissed

Judgement

D.S. Sinha, J.—The principal prayer of the petitioners is that the respondents be commanded to give grant-in-aid to them for a period of five years in accordance with the Government order dated 21st July, 1986, a copy whereof is Annexure-1 to this petition.

2. The petitioners Nos. 2 to 5 assert that acting upon the promise for the grant-in-aid held out by the Government through the aforesaid Government order dated 21st July, 1986 they constructed a cinema hall and applied for licence for exhibition of cinematograph films therein with the benefit of grant in-aid by way of exemption in entertainment tax but the respondents are illegally denying the benefit of grant-in-aid assured in the Government order.

3. To buttress their claim the petitioners invoke the doctrine of promissory estoppel and place reliance upon a decision rendered by the Hon'ble Supreme Court of India in the case of Amrit Banaspati Company Limited v. State of Punjab, reported in 1992 UPTC 593.

4. Having carefully scrutinized the Government Order dated 21st July, 1986 and the judgment of the Hon'ble Supreme Court of India, the Court has no doubt

that the reliance upon the doctrine of promissory estoppel as well as the judgment of the Hon''ble Supreme Court of India is not only misconceived and misplaced, it also betrays total lack of understanding thereof.

5. Paragraph 4 of the Government Order, which is the substratum of the claim of the petitioners, unequivocally and unambiguously notified that the benefit of grant-in-aid would be available only to such cinema houses who apply for licence for exhibition of cinematograph films during the period between 1st January, 1984 and 31st March, 1990.

6. Indisputably, the cinema house of the petitioners was not complete till 31st March, 1990, the last date appointed for making application for licence and thereby become entitled to the grant-in-aid. It came to be completed somewhere in September, 1991 as is evident from the averments in paragraph 9 of the petition. Thus, no application for grant of licence for exhibition of cinematograph films in the cinema house of the petitioners could be made up to 31st March, 1990, which was sine qua non for availability of the benefit of the grant-in-aid. On account of their failure to comply with the requirement of applying for licence for exhibition of cinematograph films during the period between 1st January, 1984 and 31st March, 1990, the petitioners are clearly not eligible for benefit of grant-in-aid promised under the Government Order dated 21st July, 1986.

7. Further, there is on record the order dated 3rd November, 1989, passed by the Licensing Authority, whereby sanction for constructing the cinema house was accorded to the petitioners on certain conditions. The condition No. 3 of the said order stipulated that the benefit of grant-in-aid would be available to the petitioners only and only if the construction of their cinema house was complete and application for grant of licence for exhibition of cinematograph films therein was made by 31st March, 1990. The petitioners accepted this condition with eyes fully opened. However, they failed to abide by the condition No. 3, as already pointed out earlier. By accepting the condition No. 3, contained in the order dated 3rd November, 1989, the petitioners would be deemed to have agreed that in case they failed to complete the construction of the cinema house and make an application for grant of licence for exhibition of cinematograph films therein by 31st March, 1990 they would forfeit their claim to the grant-in-aid envisaged in the Government Order dated 21st July, 1986. Admittedly, the petitioners have failed to fulfill the condition No. 3 of the order dated 3rd November, 1989. They are, therefore, estopped from making any claim for the grant-in-aid under the G.O. dated 21-7-1986.

8. There is yet another aspect which disentitles the petitioners to the grant of any relief. From a perusal of Annexure-5 to the petition; which is the order of Assistant Entertainment Tax Commissioner, Varanasi, it appears that the licence for exhibition of the cinematograph films in the cinema house of the petitioners has been granted on the condition of making deposit of a sum of Rs. 8,500/- by way of security deposit for the entertainment tax without any claim for exemption by way of grant-in-aid. The petitioners have acquiesced to this

condition and made the requisite deposit of the security without any protest or claim for grant-in-aid contemplated by the Government Order dated 21st July, 1986. By doing so the petitioners would be presumed to have waived their claim for the grant-in-aid and cannot be allowed to turn around to contend that they are entitled to the grant-in-aid.

9. On the facts and the circumstances detailed hereinbefore, neither the doctrine of promissory estoppel, in general, nor the decision in the case of Amrit Banaspati Co. Ltd. (supra), in particular, supports the claim of the petitioners.

10. All told, in the opinion of the Court, it is not a fit case for interference under the special and extraordinary jurisdiction under Art. 226 of the Constitution of India. The petition is dismissed accordingly.

11. Sri V.M. Sahai, the learned counsel for the petitioners, makes an oral application, under Art. 134A of the Constitution of India, for a certificate that the instant case involves such a substantial question of law of general importance which in the opinion of this Court needs to be decided by the Hon"ble Supreme Court of India. In the opinion of the Court, the objective condition of existence of a substantial question of law of general importance requiring decision by the Hon"ble Supreme Court of India, which is a condition precedent for the grant of certificate prayed for, is not satisfied. In the absence of any question of law of such general and pervasive importance which imperatively needs to be decided by the Apex Court of the country, the Court rejects the prayer for certificate under Art. 134A of the Constitution.

12. Petition dismissed.