(2002) 01 PAT CK 0110

In the Patna High Court

Case No : C.W.J.C. No. 2146 of 2001

Tribhuwan Kumar Saraff APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 07-01-2002

Acts Referred:
Bihar Cinemas (Regulation) Act, 1954 — Section 4
Bihar Entertainment Tax Rules, 1984 — Rule 3, 6

Citation : (2002) 2 PLJR 119

Hon'ble Judges : Ravi S. Dhavan, C.J;Shashank Kr. Singh, J

Bench : Division Bench

Advocate : Madhaw Roy, for the Appellant; Amar Nath Singh, for State, for the Respondent

Final Decision : Allowed

Judgement

Ravi S. Dhavan, C.J.—Tribhuwan Kumar Saraff runs a cinema business known as Sri. Ram Picture Palace, Riga Road, Sitamarhi. The licence for running a business of cinema was granted by a certificate and registration, memo No. 680 (Si) dated 2 August 1995. The capacity of the cinema hall initially was for 499 seats. Subsequently, the Petitioner had applied to the licensing authority for the modification and amendment of the licence so that the seats be permitted to be reduced to 340. On facts there is no issue between the Petitioner and the State Respondents.

2. But, the Respondents contended that whereas the licensing authority may have permitted a reduction of seats in pursuance of an amended registration under Rule 6 of the Bihar Entertainment Tax Rules, 1984 so made under Bihar Entertainment Tax Act, 1948, the Petitioner can-not receive clearance under the Bihar Entertainment Tax Act, 1948 and the rules framed thereunder. The contention on behalf of the State Respondents is that the Petitioner should also have applied under Rule 3 of the Bihar Entertainment Tax Rules, 1984 and only then it will be formally accepted that the Petitioner has been granted permission

to reduce the seats in the cinema hall and may carry on business with this reduction in seats.

3. The issue seems to be dragging. This is a situation of having the mechanism of the rules, whether under the Bihar Cinema (Regulation) Act, 1954 or under the Bihar Entertainment Tax Act, 1948 to be worked in such a manner that is not hostile to the cinema industry and achieves the purpose and intention of monitoring the intake of revenue; the dominant purpose of the Rules in context.

4. The plain question is on where the cinema owner has to go first if he seeks a modification in the licence. The capacity of seats in a cinema hall is one major factor on which the licence is granted. The answer is clearly provided under the Bihar Cinema (Regulation) Act, 1954 which confers power on a licensing authority to grant the licence for the purpose of running a cinema. The modification of a licence, thus, is the power of the same authority. Accordingly, the Petitioner sought an amendment in the licence. Normally any amendment on the licence granted is a matter within the meaning of Section 4 of Bihar Cinema (Regulation) Act, 1954. The contention of the Respondents is not that this amendment could not take place u/s 4. But, the Respondents contend that the Petitioner should also have applied for an amendment of the registration under Rule 6 of the Bihar Entertainment Tax Rules, 1984. Rules 6 does not name the authority. The Respondents contend that the authorities are named in Rule 3. Rule 3 is about an application for registration for the purpose of taxation.

5. This matter on this small issue had dragged on so much that the Petitioner has had to close down the cinema business. The State has also lost taxes because if the business of the cinema has not run the State has lost its revenues. The cause is red-tape.

6. When a licence is amended, because it has been permitted to be amended, the law accepts that the authorities whose job it is to co-ordinate will intimate each other on the information that a cinema licence has seen an amendment in the licence on the number of seats; increased or reduced. In the present case it has been reduced. Clearly, the issues were generated at the behest of the Respondents. Better co-ordination could have kept the consequential result of this exercise at bay.

7. Since the cinema hall has been closed the matter relating to registration under the Entertainment Tax Rules, 1984 is academic. On record, in the counter affidavit of the Respondent in paragraph 5, the concerned Respondents are apparently aware of the aspect that the Petitioner had applied for the amendment of the licence and the prayer to reduce the number of seats had been granted. Let this matter rest. The licence as amended had been granted on 27 June 1998 vide a memo no 332 also dated 27 June 1998, so permitted by the District Magistrate, Sitamarhi and a copy of this amended licence had been sent to the Assistant Commissioner, Commercial Taxes, Sitamarhi also. Thus, any formality which was required to be done has already been done.

8. With this admitted position on record the action of District Entertainment Magistrate, Sitamarhi in his communication No. 271 dated 9 May 2000, Annexure 5 to the petition has to be quashed. It is accordingly quashed.

9. Petition is allowed with costs.

