
(1981) 08 RAJ CK 0006

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1217 and 1210 of 1981

United Pictures

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 14-08-1981

Acts Referred:

Constitution of India, 1950 — Article 226, 32
Evidence Act, 1872 — Section 115
Industrial Disputes Act, 1947 — Section 10, 17A

Citation : (1981) RLW 652 : (1981) WLN 397

Hon'ble Judges : M.L. Shrimal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.L. Shrimal J.

1. These two writ petitions Nos. 1217 of 1981 and 1210 of 1981, filed under Article 226 of the Constitution of India by M/s United Pictures and M/s T. Naveen Pictures respectively involve common questions of law and facts. They are, therefore, disposed of by a common judgment.

2. Writ petition No. 1217 of 1981 relates to the film "Bin Maa ke Bache" and the writ petition No. 1210/81 appertains to the film "Kranti". M/s K.S. Enterprises, Motion Picture Producers, Bombay producer of the film "Bin Maa ke Bache" move an application to the Government of Rajasthan for exemption of the exclusion of the film from payment of entertainment tax under the provisions of Section 7 of the Rajasthan Entertainment (Advertisement) Tax Act, 1957 (hereinafter referred to as "the Act of 1957"). The Government, after considering the Material placed before it, vide order dated 25th February, 1981 (Annexure 7), granted exemption from payment of entertainment tax along with additional entertainment tax for a period of six months. The above noted order was published in the Rajasthan Gazttee. In the terms of the order the petitioner was required to produce a bank guarantee in the sum of Rs. 10,000/- and the same was produced. The case of

the petitioner, M/s United Pictures, is that prior to the passing of the above noted order, dated 25th February, 1981 (Annexure 7), it purchased three prints of "Bin Maa ka Bache". In view of the exemption from payment of entertainment tax, it further purchased four extra prints of the film in order to avail itself of the benefit of the exemption and for that purpose it paid an extra sum of Rs. 1,37,000/-. It also acquired a sole distributorship i.e. the right of letting out on hire films in the State of Rajasthan. It entered into agreements with the proprietors of various cinema houses with an express condition that the exhibition of the picture would be "tax free". On 30th July, 1981 the Government of Rajasthan, after revising its opinion, passed another order, Annexure 9, whereby exemption of recovery of entertainment tax and additional tax was withdrawn and the previous order, dated 25th February, 1981, relating to the picture "Bin Maa ke Bache" and order dated 20th April, 1981 pertaining to film "Kranti" relating to the exemption from payment of tax were cancelled.

3. The allegation of M/s. T. Naveen Pictures is that the producer of the film "Kranti", M/s V.I.P. Film Bombay made an application to the State of Rajasthan u/s 7 of the Act of 1957. The Government after considering the material placed before it passed an order on April 20, 1981 (Annexure 5), exempting the above noted Hindi film "Kranti" from payment of entertainment tax for a period of six months. The petitioner M/s. Naveen Pictures are sole distributors of that film in the territory of the State of Rajasthan.

4. The Producer was directed to supply copies of the film to the Audio Visual Education Officer, Ajmer and for that purpose to execute a bond in a sum of Rs. 10,000/-. A bank guarantee was also submitted to the Government by the Producer. The distributors purchased three prints in the first instance. Its case is that after grant of exemption it further purchased four prints so that benefit of tax exemption could be availed of throughout the territory of Rajasthan. After the issuance of the exemption order the firm entered into contract with the owners of the various cinema houses to exhibit the film and it also took on hire some of the cinema houses. As already noted above, on 30th July, 1981 the Government of Rajasthan revised its opinion and withdrew the exemption. The impugned order has been marked as Annexure 7 in writ petition No. 1210/81.

5. Learned Counsel, appearing on behalf of the petitioners, has challenged the validity of the order, dated 30th July 1981, withdrawing the exemption granted in favour of the petitioners on the following grounds:

(i) The State Government has exhausted its powers u/s 7 of the Act of 1957 after passing order regarding exemption from payment of entertainment tax on the exhibition of the above noted films. A right of review does not exist unless conferred by law. The right of review is a substantive right is not a procedural one. Such a right could not have been exercised by the State Government to the prejudice of the interest of the petitioners.

(ii) that the State Government is barred by the principle of equitable estoppel

and as such could not have cancelled its previous orders. The State Government by passing the above noted two orders of exemption and publishing the same in the State Gazette, gave an assurance to the petitioners which was intended to affect the legal relationship between the petitioners and Others and the petitioners, having relied upon such orders, had acted in pursuance of them and spent huge amounts and entered into various agreements, with other parties. It was not open to the State Government to revert to a position as if no such directions or assurance had been given; and

(iii) that the impugned order dated 30th July, 1981, revoking the exemption granted in respect of the above noted two pictures, was passed without giving an opportunity of hearing or notice to the petitioners and as such it violates the principle of natural justice.

6. Learned Advocate General, appearing on behalf of the State, has controverted, with equal vehemence, the above noted contentions and also raised a preliminary point that the petitioners did not have a locus standi to file the present writ petitions.

7. I will first deal with the question of locus standi and thereafter I will deal with other points raised by the petitioners. The petitioners' contention is that they were interested in exhibition of the films in the cinema houses throughout Rajasthan for a period of six months in terms of the exemption of entertainment tax and additional tax granted to them by the State Government.

8. Learned Counsel then urged that the founding fathers of the Constitution have designedly couched Article 226 in a comprehensive phraseology to enable the High Court to remedy injustice where ever it is found. The scope and power of the High Court is wider than that exercised by the Supreme Court under Article 32. The word "aggrieved" person is a comprehensive word of wider import. It cannot be confined within the bounds of rigid exact and inflexible definition. An aggrieved person in the context is that person who has a particular or peculiar interest of his own, beyond that of a general public, in showing that the law has not been properly administered. The petitioners, after spending huge amounts in purchasing extra prints to be exhibited through out Rajasthan, are certainly persons especially interested and they cannot be considered at par with others. They have a right to raise objection to the order of revocation as it is to affect their pecuniary interest to great extent. Revocation of the orders of exemption is going to create certain pecuniary liabilities on the petitioners so some of the cinema owners have refused to exhibit the films on the ground that it would not be profitable for them to exhibit them if they were to collect entertainment tax. As the commercial interest of the petitioners is going to be adversely affected by the impugned orders, they can well be termed to be aggrieved persons, entitled to file the writ petitions. In support of the above contention, learned Counsel for the petitioners has placed reliance on *M.V. Kuppaswami Vs. The Taluk Supply Officer, Sriperumbudur* and *Another, S. Subba Rao v. Puli Veerarahavish and Ors.* AIR 1977 AP 631 Rajasthan State Vs. Nathmal and Another,

9. M.V. Kuppuswami Vs. The Taluk Supply Officer, Sriperumbudur and Another, Relates to the seizure of goods by the authorities from the owner of a public carrier and the question which arose before their Lordships was as to whether the possession of the goods in the course of transit could challenge the validity of the seizure. The judgment held that possession is a good title against any one who cannot show a better right. This case has no bearing on the point in issue.

10. In Section Subba Rao's case AIR 1977 AP 631 exemption granted to one of the temporary cinema holders was objected to by the permanent cinema owners on the ground that a temporary cinema should be situated at a distance of not less than 1000 meters and that the direction granted was contrary to Rules. Their Lordships, after persuing the Regulations and placing reliance on the earlier judgement of the same court. held that the owner of permanent cinema was entitled to a notice prior to the passing of the order of exemption and law be treated as person aggrieved and was entitled to bring the writ petition. The decision of Andhra Pradesh High Court was based on the peculiar facts and circumstances of the case and it does not provide any useful guidelines for the decision of the case in hand. In that case the petition was ultimately dismissed on merits as it was held that the petitioner there had not suffered any damages by reason of the grant of permission to the first respondent.

11. The case of Appana AIR 1980 Kar 112 was concerned with the selection of site for construction of tank. While repelling the preliminary objection raised by the respondent, the Court held that what the petitioners were required to prove was that they were not busy body meddlesome interpreters and they had sufficient, substantial and genuine interest in the subject-matter as their lands were situated near the place where the tank was to be located and by not constructing the tank at that place, they could be described as persons, who would suffer personal injury by the impugned order.

12. In the case of Bhanwarlal AIR 1952 Raj 180 and objection was raised on behalf of the respondents that the petitioner was not concerned in the matter, as he was not required to pay the tax and was only a collecting agent of the Municipal Board. Their Lordships repelled the argument and held that no doubt the applicant in the case was not directly paying the tax, but he was certainly interested in the matter because he was collection the tax and was paying it to the Municipal Board and in the case he was the person who was actually threatened with coercive process. On the facts of the case it was held that he was the person interested in the matter. I respectfully agree with the above observations made by the Division bench of this Court. But the observation made in that case in no way improves the case of the petitioners here.

13. A perusal of Section 4 of the Act of 1957 shows that above entertainment tax is levied and charged at the time of admission to the cinema theatre. It is levied and paid to the State Government even on complimentary tickets, issued by the proprietor for every entertainment. Section 5(2) provides that the entertainment tax shall be due and recoverable from the proprietor Sub-clause (3) of Section 5

further lays down that the proprietor shall submit such returns relating to payment of the tax to the authority concerned. The proprietor is convicted for the breach of the provisions of the Act of 1957, the licence granted to the proprietor for exhibition is further liable to be cancelled. The scheme of the Act is that the tax is required to be paid by a person who enters the cinema-hall for seeing a film. The proprietor of the cinema is required to collect the tax and pay the same to the State Treasury. He has been made criminally liable for breach of the provisions of the Act. It nowhere provides that a distributor or any other liable to pay person who sends the film for being exhibited in a cinema-house shall also be the tax.

14. In *Indian Sugar Mills Association Vs. Secy. to Government, Uttar Pradesh Labour Department and Others*, an application was made by the Indian Sugar Mills Association with respect to an order under the Industrial Disputes Act, 1947. It was held that the order in question concerned not the Association, but various mills which were the members of the Association and as such the Mills could have made the application and not the Association. The case before me is somewhat similar to the above noted case. The petitioners were neither required to pay the tax nor were they required to collect the same. No coercive process could equally be taken against them if entertainment tax was not paid even after the revocation of the order of exemption.

15. A similar question arose in *Ex parte STOTT* (1916) 1 K B 7. The petitioners in that case, Walter Stott and Frederic. White, were carrying on the business as hirers of cinematograph film. They acquired the sole right of letting out on hire for exhibition and cinematograph film, known as "Five Rights" in the counties of Lancashire, Yorkshire and Derbyshire and other places. They entered into an agreement with the proprietor of a cinematograph theatre to let the said film on hire for exhibition at the theatre for the week ending October 9 for a sum of 40 pounds. After giving notice to the owner of the theatre concerned, the authorities cancelled the arrangement for exhibition. Application was then made on behalf of Messrs. Stott and White to the provisional Court for a rule nisi through a writ of certiorari, to bring to the justices' notice prohibiting the exhibition to be quashed. Their Lordships dismissed the writ petition, holding that the fact that the Justice's order prohibiting the exhibition deprived the applicants of the benefit of the contract that they had made with the licences, did not give them a right to complain that the Justices order was bad. This case was read with approval in *Jasbhai Motibhai Desai v. Roshan Kumar, Haji Bhushir Ahmed and Ors.* AIR 1976 SC 570. In that case the owner of a rival cinema held a licence for exhibition of cinematograph film. He tried to invoke the certiorari jurisdiction against the grant of no objection certificate in favour of the proprietor of rival cinema theatre. Their Lordships, after considering a number of cases, held that the petitioner was not denied or deprived of a legal right, under the statutory provisions or under the general law, which could be said to have been subjected to or threatened with injury as a result of the grant of no objection certificate to the rival trader. He had not sustained any injury to any legally protected interest

and the impugned order did not operate a decision against him. He had no legal right or justiciable claim and, therefore, he could not be termed to be a person aggrieved. The orders of exemption from payment of tax by the concerned authorities u/s 7(2) of the Act of 1957, were obtained by producers and not by the petitioners. The petitioners are not the persons who would be held liable to pay the tax for an entry at the time of exhibition of the film. They are also not required to collect the tax or file the return or can be put to any penalty in case the owners of the theatre i.e. the proprietor failed to pay the tax. A remote claim that by revocation of the impugned order, the number of visitors to the exhibition of the films would be reduced, exists only in the realm of imagination and on the parity of reasoning given in the Allahabad case and the Kings Bench case, I am firmly of the opinion that the petitioners cannot be termed to be a person aggrieved and they can have no locus standi to file the present writ petition. As neither the producers nor the owners of the theatres, where the films had been exhibited, have made any complaint or; have chosen to come before this Court, the petitioners cannot be said to be persons sufficiently interested to maintain the present writ petitions.

16. Viewed from another angle, even if it is held that by passing the, impugned orders of revocation of the exemption, the petitioners suffered loss, because other cinema owners refused to exhibit the films. Then also, it cannot be said to be legal right or claim enforceable against the State Government. The person aggrieved does not really mean a man who is deprived of benefit which he may have received if the order of revocation of exhibition would not have been passed. A person aggrieved must be a man who has suffered a legal grievance, a man against Whom a decision has been pronounced. The petitioners are not the persons against whom the impugned notification dated 30th July, 1981, can be said to have been issued. The impugned notification has not deprived them of any valuable right. It has not affected their title. They could very well hold the pictures of those whose distribution right they purchased They could also exhibit those pictures in the cinema theatres of the persons who agreed to exhibit them. A remote possibility of their suffering some indirect loss can perhaps be a subject-matter of a civil suit. But it does not entitle, them to invoke the extraordinary jurisdiction of this Court The questions, (i) as to what amount has been paid by the petitioners to the producers for obtaining the sole distributorship in Rajasthan for the concerned pictures, (ii) how many prints were purchased after the publication of the orders of exemption in Gazette and (iii) as to which cinema-theatre owner refused to exhibit their films, are debatable and they involve disputed questions of facts and they cannot be inquired into by this Court while exercising its extraordinary powers under Article 226 of the Constitution.

17. Learned Counsel urged that the Government had no power to cancel or supersede the order of exemption from payment of tax passed regarding the exhibition of films "Kranti" and "Bin Maa Ke Bache". Such a power has not been provided under any section of the Act of 1957. The rule of construction enunciated by Section 23 of the Rajasthan General, Clauses Act, 1955,

(hereinafter referred to as "the Act of 1955") cannot be invoked in respect of the provisions of Section 7(2) of the Act of 1957. In support of this contention, he placed reliance on *The State of Bihar Vs. D.N. Ganguly and Others*, and *Gopal Jairam v. State of Madhya Pradesh* AIR 1951 Nag 181.

18. Learned Advocate General, appearing on behalf of the State, argued that Section 10(1) of the Industrial Disputes Act came up for consideration before their Lordships of the Supreme Court. Therein it was observed that once an order in writing was made by the appropriate Government, referring an industrial dispute to the Tribunal for adjudication u/s 10(1), proceedings before the Tribunal were deemed to have commenced and were deemed to have concluded on the day on which the award made by the Tribunal became enforceable u/s 17A. It was further observed in the same case that after the dispute was referred to the Tribunal, it was the Tribunal which was seized of the dispute and which could exercise jurisdiction in respect of it and the appropriate Government could not in respect of reference pending adjudication before a Tribunal only u/s 10(5) of the Act. The above noted observation, the learned Counsel urged, was made by their Lordships of the Supreme Court because after making the reference the State Government ceased to have any jurisdiction in that matter. It was within the jurisdiction of the Tribunal, to which the case was referred, to pass appropriate orders. Such a position is not envisaged by Section 7 of the Act of 1957. I find considerable merit in the above submissions. As regards the other cases, they are distinguishable on the point because an elected member acquires status and the status conferred on a person cannot be revoked by exercising powers under the Act of 1955. No question of status is involved in the case on hand. It is a simple case of concession or exemption granted in favour of the films at the instance of their producers. The exemption was granted by publication of notification in the official Gazette. The power to issue a notification includes a power to rescind any order made by the authority. It has been expressly provided so u/s 23 of the Act of 1955. By virtue of Section 21 of the Act of 1957 the provisions of the Act of 1955 have been made applicable to the provisions, in that Act. There is nothing to hold that Section 23 of the Act of 1955 does not vest in the State Government powers to issue notification dated 30th July, 1981.

19. The third contention raised by learned Counsel for the petitioners is that as a result of publication of notices, regarding the exemption of the above noted films from payment of entertainment tax for a period of six months, the State Government made the petitioners believe by its representation that the films "Bin Maa Ke Bache" and "Kranti" would not be subjected to payment of entertainment tax at the time of exhibition for a period of six months and the petitioners believing that statement acted by purchasing more copies of these films as well as entered into contracts with various cinema-theatre owners. Learned Counsel urged that even though the case does not fall within the term of Section 115 of the Evidence Act, it is open to the petitioners to assert that the Government was bound to carry out the terms made by it. In support of the

above contention he has placed reliance on *Union of India and Ors. v. Anglo Afghan Agencies etc.* AIR 1968 SC 718 I do not find myself in agreement with the above contention of the learned Counsel for the petitioners for two reasons. Firstly, the burden of proof that the State Government was estopped by its conduct under principle of promissory estoppel always lay upon the party, who wants, to take advantage of it. A perusal of the writ petition above that sufficient averments have not been made therein. The petitioners have failed to mention in the writ petitions as to when the notifications of exemption granted by the State Government u/s 7(2) of the Act of 1957 regarding the films "Bin Maa Ke Bache" and "Kranti" were published in the Official Gazette. They have also failed to mention as to how many films were purchased by them prior to the publication of the notification and how many films were purchased by them after publication of the above-noted notifications in the Official Gazette. In such circumstances in the absence of necessary data, it cannot be held that under the principle of promissory estoppel, the State Government was estopped from issuing the notification dated 30th July, 1981. Examining the case from another point of view, the notifications issued by the State Government, exempting the two films from payment of entertainment tax and the notifications withdrawing the exemption, fall within the purview of delegated legislation. In *Rameshchandra and Kacgardas Porwal and, Ors. v. State of Maharashtra and Ors.* (11), a notification issued under the Bihar Agricultural Produce Markets Act, 1960, declining certain place to be a principal market yard in the market area, was held to be a legislative Act. Relevant portion (para 17) reads as under:-

We are concerned with legislative activity; we are concerned with the making of a legislative instrument, the declaration by notification of the Government that a certain place shall be a principal market yard for a market area, upon which declaration certain statutory provisions at once spring into action and certain consequences prescribed by statute follow forthwith. The making of the declaration, in the context, is certainly an act legislative in character and does not oblige the observance of the rules of natural justice."

A perusal of the Scheme, of the Act of 1957 Shows that after publication of the notification, dated 30th July, 1981, certain consequences did occur. All persons seeking admission to see the films were required to pay the entertainment tax. the owners of the cinema theatres are also required to charge the tax with the tickets, file a return regarding that and in case of commission of default, they were liable to be penalised. Following the ratio decidendi of the AIR 1981 1127 (SC) I hold that notifications dated 30th July, 1981" (Annexures 7 and 9) were passed in exercise of the legislative functions of the authorities. It is a delegated piece of legislation The law stands well settled by a catena of cases of the Hon"ble Supreme Court that principles of promissory estoppel do not apply to the legislative act of the State and the case of *Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others*, in no way improves the case of the petitioners. Their Lordships of the Supreme Court in *Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others*, after following the ratio decidendi of the *Excise*

Commissioner, Uttar Pradesh, Allahabad and Others Vs. Ram Kumar and Others, held that:-

It may, therefore, be stated that the view of this Court has been that the principle of estoppel is not available against the Government in exercise of legislative sovereign or executive power.

20, Even if it is held that the impugned notification was issued by the State Government in exercise of its executive powers, then also, on the basis of the high authority quoted (supra) it can be safely said that the state was not barred by the principles of promissory estoppel in issuing a notification dated 30th July, 1981 rescinding its earlier notification regarding of entertainment tax on the exhibition of the above noted films.

21. The last contention raised by the learned Counsel is that the impugned order has been passed in violation of the principle of natural justice. I find no merit in the above argument. This grievance could have been made at the most by the producers at whose instance the orders regarding the exemption of payment of entertainment tax were passed. It is not feasible to infer in the facts and circumstances of these cases, that the State Government could have issued notices to all persons i.e. the owners of the cinema theatres in Rajasthan and all those persons who wanted to see the film before issuings of the impugned order. When the producer has not challenged the impugned order, it cannot be said that the State Government has acted against the principles of natural justice. Besides that, no question of natural justice arises against the orders passed by the State Government in exercise of its legislative powers.

22. For the reasons delineated above, I hold that there is no merit in these writ petitions and they are summarily dismissed. In the circumstances of the cases, the parties are ordered to bear their own costs.