

(1996) 05 PAT CK 0012
In the Patna High Court
Case No : C.W.J.C. No. 3980 of 1985

Urvashi Cinema

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-05-1996

Acts Referred:

Bihar Entertainment Tax Act, 1948 — Section 10, 10(2), 12, 13, 13A
Bihar Entertainment Tax Rules, 1984 — Rule 2, 25A, 26
Bihar Finance Act, 1982 — Section 13C, 3(1)
Constitution of India, 1950 — Article 226

Citation : (1996) 2 PLJR 355

Hon'ble Judges : N. Pandey, J

Bench : Single Bench

Advocate : Ramesh Kumar Agrawal, for the Appellant; Rameshwar Prasad and Veena Kumari Jaiswal, for the Respondent

Final Decision : Dismissed

Judgement

N. Pandey, J.—The Petitioner M/s Urvashi Cinema, a partnership firm having its place of business in the town of Bettiah has by means of this application under Article 226 of the Constitution of India, has prayed for quashing a notice issued u/s 13 C of the Bihar Entertainments Tax Act, 1948 (hereinafter called "the Act"), by the Assistant Commissioner of Commercial Taxes, Bettiah Circle, and also the order u/s 13C(2) of the same authority, dated 31.5.1983, contained in Annexure 7, whereby and whereunder an amount of tax liability due to non-payment of entertainment tax was fixed.

2. Before turning to the rival contentions of the parties, it would be appropriate to have a brief survey of some of the facts.

The Petitioner's firm constructed a cinema house known as "Urvashi Cinema" at Bettiah. The first exhibition of cinematography films started with effect from 30.7.1982. The population of Bettiah town at the relevant time was less than one lakh. The State Government in exercise of its power conferred on it u/s 10(2) of

the Act had issued a notification on 14th May, 1982 granting exemption from payment of entertainment tax for one year from the date of the first cinematography exhibition to a newly constructed cinema house at a place having less than one lakh of population according to 1981 census. It is claimed that in view of the notification, the Petitioner was not required to deposit entertainment tax till 30th July, 1983.

3. Further case is that having regard to the aforesaid notification regarding exemption, the District Magistrate, Bettiah, also approved the admission fee for different classes of the cinema which would be evident from the letter of the said authority dated 20.7.1982 contained in Annexure 3.

4. The grievance is although Petitioner had realised admission fee at the rate approved by the District Magistrate but by the impugned order, the Assistant Commissioner, arbitrarily held that admission fee charges by the Petitioner was inclusive of entertainment tax.

5. Mr. Ramesh Kumar Agrawal, learned Counsel, contended that admittedly the Petitioner had realised admission fee at the rate prescribed by the District Magistrate. The materials which were produced by the Petitioners before the concerned authority as well as the letter of the District Magistrate, contained in Annexure 3 would show that no amount of entertainment tax was realised by the Petitioner. In fact the rate of admission fee fixed by the District Magistrate itself would show that no amount of tax was included. Therefore, in absence of any evidence that Petitioners had charged entertainment tax, it would not be proper for the Respondent authority to impose penalty on a mere presumption that admission fee realised by them was inclusive of entertainment tax.

6. The next submission is that Assistant Commissioner is not the "prescribed authority" u/s 13C(2) and (3) of the Act. Therefore, he was not empowered either to issue a notice under such a provision or pass an order for penalty. Thus entire proceeding including the notice contained in Annexure 5 as well as the final orders contained in Annexure 7 series are illegal for want of jurisdiction of the concerned authority.

7. Turning to the first submission of the learned Counsel there is no doubt that Petitioners had collected admission fee at the rate approved by the District Magistrate, as contained in Annexure 2. But a bare reference to the impugned order would show that such an admission fee was inclusive of entertainment tax as prescribed by the Urban Development Department, Government of Bihar, vide letter. No. 3114 dated 25th May, 1992, wherein classwise rate of admission fee plus entertainment tax was prescribed. The moment both the rates are taken together, it would come to same amount which was approved by the District Magistrate.

8. To make the aforesaid controversy more clear that the rates approved by the District Magistrate was inclusive of entertainment tax, a bare reference to the details furnished in the impugned order prescribing different rates for admission

fee and entertainment tax for each class, would show that such rates were prescribed by the Urban Development Department vide letter No. 3114 dated 25th May, 1982. For example, the rate of D.C. Class for one ticket as prescribed by the Urban Development Department was Rs. 2.10 for admission fee and Rs. 2.30 as entertainment tax. Therefore, it will come to Rs. 4.40. The rate of the same class approved by the District Magistrate as would appear from Annexure 3, was Rs. 4.40 per ticket. The letter also indicates that such a rate was inclusive of entertainment tax prescribed by the Urban Development Department vide letter No. 3114. Therefore, there can be no basis to take a plea that the Petitioners have not realised entertainment tax. On this question, it would be advisable to notice some of the relevant provisions of the Act.

Section 9 prescribes a procedure for submission of returns and payment and recovery of entertainments tax. Section 9A empowers the competent authority to take recourse to a special mode for recovery of such tax. Section 9B empowers the prescribed authority to finalise the assessment of tax. Section 10 empowers the State Government to grant exemption from payment of tax in appropriate cases. Section 12 empowers an officer authorised by the State Government to entry into and inspection of places of entertainments at any time in proper cases. Section 13 gives an authority to the prescribed authority to direct any proprietor of a cinematograph to produce books of account and documents including, stamps and tickets etc. to ensure the object of the Act. As per Section 13A, the prescribed authority upon receipt of an information that any proprietor had concealed tax, can take appropriate steps in accordance with the procedures prescribed therein. Section 13B is a provision for taking steps with respect to escaped assessment. Section 13C was inserted by the Bihar Finance Act, 1982, authorising the prescribed authority to collect from any person any amount by whatever name and descriptions it may be called, towards or purporting to be tax on admission to an entertainment. It says no registered proprietor shall collect from any person any such amount except in a case in which and to the extent to which such proprietor is liable to pay tax under Sub-section (1) of Section 3. It would be apt to notice the provisions of Section 13C in extenso as below:

13C. Restriction on collection of tax.-

(1) No person, who does not hold certificate of registration granted under Sub-section (3) of Section 6 shall collect from any person any amount, by whatever name or description it may be called, toward or purporting to be tax on admission to an entertainment.

(2) No registered proprietor shall collect from any person any such amount except in a case in which and to the extent to which such proprietor is liable to pay tax under Sub-section (1) of Section 3.

(3) If any person or registered proprietor contravenes the provisions of Sub-section (1) of Sub-section (2) the prescribed authority shall after giving an

opportunity of being heard by an order in writing direct that such person or registered proprietor shall pay by way of penalty, a sum equal to twice the amount collected in contravention of the provisions of the said Sub-sections (1) and (2).

9. Undisputedly, the prescribed authority as incorporated u/s 13C(2) and (3) of the Act has not been defined under the Act.

10. The State Government in exercise of its power u/s 21 of the Act had framed Bihar Entertainments Tax Rules, 1949, consistent with the Act for securing payment of entertainment tax and for the purpose of carrying into effect all the provisions of the Act. As per Rule 25A, to give effect to the requirements of Sections 9A, 9B or 9C of the Act, the Deputy Commissioner, Assistant Commissioner and the Commercial Tax Officers were defined as prescribed authority. As per Rule 26 which was substituted with effect from 1.4.1981, to give effect to the provisions of Sections 9 and 13 of the Act, Deputy Commissioner, Assistant Commissioner and the Commercial Tax Officers were empowered to function as the prescribed authority.

11. As per the submission of Mr. Agrawal, which I have already noticed, since Rules 25A and 26 of the aforesaid Rules, do not authorise the aforementioned authorities to function as prescribed authority, as required u/s 13C of the Act, the impugned notice issued by the Assistant Commissioner or the orders passed thereon are illegal and without jurisdiction.

12. Before answering the aforesaid proposition, it would be proper to notice that the State Government Subsequently by a notification dated 12th April, 1984, in supersession of the Bihar Entertainments Tax Rules, 1949, introduced the Bihar Entertainments Tax Rules, 1984. As per Rule 2(g) of this Rule, "Prescribed Authority" means Deputy Commissioner, Assistant Commissioner or Commercial Tax Officers of the circle or sub-circle. But insertion of such provisions may not be relevant in this case since the impugned orders were passed by the Respondent authority as back as in the year 1982-83. Therefore, only question remains for consideration is whether the Assistant Commissioner being empowered to function as "Prescribed Authority" to give effect to the provisions of Sections 9 and 13 of the Act could exercise his jurisdiction to give similar effect to the provisions of Section 13C(2) and (3) of the Act. From a bare reference to the different provisions of the Act, which I have already noticed it would appear that Section 13 and other provisions, namely, Sections 13A to 13C of the Act, inserted from time to time, prescribed different procedures and empowers the prescribed authority to take steps for realisation of the amount of entertainment tax from the proprietors of cinematograph by taking recourse to different measures. Section 13C of the Act say that no person, who does not hold certificate of registration, shall collect from any person any amount towards or purporting to be tax on admission to an entertainment. If any person or a proprietor is found to have contravened, the provisions of Sub-section (1) or (2), the prescribed authority shall, after giving opportunity to the concerned party,

impose penalty and also take other measures as prescribed under the law. Therefore, it is wrong to say that an authority prescribed under Rule 26 of the 1949 Rules, for the purpose of Sections 9 or 13, would not be empowered to function as prescribed authority for the purpose of Section 13C(2) and (3) of the Act because the provision of Section 13C is not an independent provision having been inserted to give effect to the provisions of the main Section. It is well known while interpreting a particular statute, doubt can only arise where the intention of the legislature is not manifest on the statute. A court while examining such controversies, is required to keep in mind the object and effect of such interpretation. In case of any ambiguity, full play should be given to call for a wider and liberal construction.

13. Therefore, having regard to the facts, since the Assistant Commissioner was duly authorised under Rule 26 of Rule 1949 for the purpose of Section 13 of the Act, it will be deemed that he was empowered to function as prescribed authority for the purpose of Section 13C of the Act as well.

14. Therefore, having regard to the facts noticed above, I find no merit in this application. Therefore, the same is hereby dismissed. But in the circumstances of the case, there shall be no order as to costs.