
(2004) 02 AHC CK 0164
In the Allahabad High Court
Case No : C.M.W.P. No. 45 of 2004

Vakil Singh Patel

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 04-02-2004

Acts Referred:

General Clauses Act, 1897 — Section 27

Uttar Pradesh Entertainments and Betting Tax Act, 1979 — Section 12

Citation : (2004) 2 AWC 1298

Hon'ble Judges : Ghanshyam Dass, J;B.S. Chauhan, J

Bench : Division Bench

Advocate : P.N. Singh and Salil Srivastava, for the Appellant;

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—This writ petition has been filed against the impugned order dated 16.1.2003 by which an entertainment tax has been assessed to the tune of Rs. 6,000 and a penalty of Rs. 10,000 has been imposed for evading the tax.

2. Facts and circumstances giving rise to this case are that the District Entertainment Tax Officer had raided the premises of the petitioner on 30.10.2002, along with its team and he found that a video film was being exhibited for public at large after issuing tickets without having any valid licence under the statutory provisions. The tickets issued by the petitioner to the cinema goers had been seized from the said persons by the raiding party and their signatures were also taken. A case was registered against him. He was issued a show cause notice by the registered post on 7.11.2002, to show cause, but he did not submit any reply, nor he appeared before it. u/s 12 of the U. P. Entertainment and Betting Tax Act, 1979, inquiry was initiated against him and the impugned order was passed. Direction was also issued to prosecute the petitioner for violation of the provisions of Section 8 of the U. P. Cinema Regulation Adhiniyam, 1955. Hence this petition.

3. Learned standing counsel has raised preliminary objection that the impugned order had been passed on 16.1.2003, and it has been challenged after expiry of more than 1 year. No explanation has been furnished, for the delay. The order impugned is appellable. Writ petition has been filed without exhausting the statutory remedy of appeal, hence the petition is liable to be dismissed.

4. Shri P.N. Singh, learned counsel appearing for the petitioner has submitted that the order impugned is arbitrary and unreasonable and has been passed without giving any opportunity of hearing to the petitioner. The petitioner cannot be relegated to the appellate forum and this Court should entertain this petition and quash the impugned order.

5. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

6. There is no averment in the petition that the premises was not raided by the respondent-authorities nor there is any explanation that the raid has been conducted on 13.10.2002, and under what circumstances, petitioner had chosen not to follow the proceedings before the statutory authority. Show cause notice was sent by registered post on 7.11.2002, therefore, there is a presumption of receipt of the registered letter by the petitioner and this presumption cannot be rebutted by merely making a bald statement that the order has been passed without giving a notice to the petitioner.

7. u/s 27 of the General Clauses Act, there is a presumption of service by registered post, as held by the Hon'ble Supreme Court in Gujarat Electricity Board and Another Vs. Atmaram Sungomal Poshani, ; Commissioner of Income Tax (Adm.), Bengal v. V.K. Gururaj and Ors. (1996) 7 SCC 274 ; 1996 VII AD 821 (SC); Adavala Sathaiah and Others Vs. Special Dy. Collector, Land Acquisition Unit I and Others, and Shimla Development Authority and others Vs. Smt. Santosh Sharma and another, . In Madanlal Kadia Vs. Union of India (UOI) and Others, , the Orissa High Court placed reliance upon the judgment of Privy Council in Harihar Banerjee v. Ramshashi Roy AIR 1918 PC 102, and held that there can also be presumption of receiving the letter sent under postal certificate in view of the provisions of Section 114(f) of the Evidence Act.

8. In Kanak Lata Ghose Vs. Amal Kumar Ghose, , a similar view has been reiterated by the Calcutta High Court by observing that if a person makes a claim that the letter was sent under postal certificate, the other side may cross-examine it on the said issue and try to find out further information as to who had posted it, at what time it was posted, etc. In Mst. L.M.S. Ummu Saleema Vs. Shri B.B. Gujaral and Anr, , the Apex Court dealt with the issue of presumption of service of letter sent under postal cover, and observed as under :

"The certificate of posting might lead to a presumption that a letter addressed to the Assistant Collector of Customs was posted on 14.8.1980 and in due course reached the addressee. But it is only a permissible and not an inevitable presumption. Neither Section 16 or Section 114 of the Evidence Act compel the

Court to draw a presumption. The presumption may or may not be drawn. On the facts and circumstances of a case, the Court may refuse to draw the presumption. On the other hand, the presumption may be drawn initially but on a consideration of the evidence, the Court may hold the presumption rebutted."

9. In *Surajmall Shiwbhagawan Vs. Kalinga Iron Works*, , the Orissa High Court held that the presumption u/s 114 of the Evidence Act, in a case of sending the letter under postal certificate, be examined consciously. In *B.L. Shrivastava Vs. M.M.L. Shridhar and Others*, , the Division Bench of Madhya Pradesh High Court held that the certificate of posting may give rise to the presumption that the letters were posted but no presumption can be drawn that they were received by the other party. In *Ayisabeevi and Another Vs. Aboobacker*, , the Kerala High Court held that in such a case, presumption of receipt of the letter u/s 114 of the Evidence Act, can be drawn.

10. In *J. Mc. Gaffin and Another Vs. Life Insurance Corporation of India*, , a similar view has been reiterated by the Division Bench of Calcutta High Court.

11. No attempt has ever been made by the petitioner to rebut that presumption of service nor he had taken pain to make inquiry from the office regarding service of notice nor he has asked any postman as to what happened to the said letter.

12. Merely making a bald statement that he did not receive the notice is not enough. Allegations of mala fide had been taken that the order has been passed at the behest of certain persons having rivalry with him which are not worth acceptance, as no such person has been named nor impleaded as a party-respondent, in this petition nor any officer who had acted at the behest of the rival party has been impleaded. Allegations of bias falls short taking note thereof.

13. In view of the above, we find no force in the petition, it is, accordingly dismissed.