(2021) 02 CHH CK 0012

Chhattisgarh High Court

Case No: Review Petition No. 232 Of 2019, 64, 65, 66 Of 2020

State Of Chhattisgarh And Ors		APPELLANT
	Vs	
M/s. PVR Ltd. A Company And Ors		RESPONDENT

Date of Decision: Feb. 12, 2021

Acts Referred:

- Madhya Pradesh Entertainments Duty And Advertisements Tax Act, 1936 - Section 2(f), 9(a)
- Chhattisgarh Naye Cinemagharon Ya Multiplex Cinemagharon Ke Nirman Ko Protsahan Yojna Ke Sahayta Anudan Niyam, 1982 - Rule 3
- Chhattisgarh Cinemas (Regulation) Rules, 1972 - Rule 2(g), 101, 108, 120

Hon'ble Judges: P.R. Ramachandra Menon, CJ; Parth Prateem Sahu, J

Bench: Division Bench

Advocate: Vikram Sharma, Sumit Nema, Varun Chopra, Anand Dadariya, Sumesh Bajaj

Final Decision: Dismissed

Judgement

P.R. Ramachandra Menon, CJ

(i) These review petitions have been filed by the State who was a Respondent in Writ Petition (T) No. 47 of 2016, Writ Petition (T) No. 3 of 2017,

Writ Appeal No. 150 of 2016 and Appellant in Writ Appeal No. 294 of 2016. It is pursuant to the right reserved in favour of them by the Apex

Court, while dismissing the SLPs as withdrawn, to file review petition before this Court {vide order dated 26.07.2019 in respect of Writ Petition (T)

No. 47 of 2016, Writ Appeal No. 150 of 2016 and Writ Appeal No. 294 of 2016, and order dated 23.08.2019 in respect of Writ Petition (T) No. 3

of 2017) against the verdict passed by a Division Bench of this Court in the matters as mentioned above, that they are before this Court again.

(ii) The subject matter relates to the eligibility to get the benefit of subsidy in terms of the Chhattisgarh Naye Cinemagharon Ya Multiplex

Cinemagharon Ke Nirman Ko Protsahan Yojna Ke Sahayta Anudan Niyam, 1982 (â€˜for short, â€˜the 1982 Rulesâ€™). The review petitions

have been filed mainly on two grounds, firstly, contending that the writ petitioners are not coming within the purview of eligibility under the above

Rules not being the â€˜Swamisâ€™ (Proprietor) which was not properly considered and secondly, that the scope of Rule 3 of the 1982 Rules with

reference to the date of commencement of operation of Cinema Hall/Multiplex was never adjudicated by the Bench while finalizing the matter.

3. Coming to the sequence of events, the claim for granting benefits under the 1982 Rules to the writ petitioners was turned down by the authorities

concerned which was sought to be challenged by filing Writ Petition (T) No. 1364 of 2014 {Avinash Developers Private Limited & Others v. State

of Chhattisgarh & Others} wherein a declaration was sought that the Petitioners were eligible and entitled for the benefits/grants/incentives in the

form of subsidy under the 1982 Rules. The writ petition came to be allowed as per judgment dated 22.01.2016 whereby the impugned orders were

quashed making it clear that the Petitioners 1 and 2, being the owners of the Mall/Multiplex, were entitled to avail the benefit conferred under the

Rules of 1982 with effect from 04.03.2010. Being aggrieved of the said direction, the State preferred an appeal in respect of the benefit granted to

the 1st and 2nd Petitioners while the 3rd Petitioner sought to challenge it for denying the benefit, besides challenging the vires of the 1982 Rules as

per Writ Petition (T) No. 47 of 2016.

4. It is seen that all the above matters were heard and finalized by the same Bench on the same date i.e. on 16.11.2018. A detailed judgment was

passed in Writ Petition (T) No. 47 of 2016 making a threadbare analysis to find out the meaning of the word â€˜Swamiâ€™, which in fact is not

defined under the 1982 Rules. It was however sought to be connected with reference to the quantum of benefit payable under the Rules by way of

refund of entertainment tax paid/payable in the context of definition of the term â€˜Proprietorâ€™ under Section 2(f) and such other provisions of

the Madhya Pradesh Entertainments Duty and Advertisements Tax Act, 1936 (for short â€˜the 1936 Actâ€™) as adopted by the State of

Chhattisgarh.

5. Reference was also made to various other provisions of the 1936 Act, particularly Section 3 casting a duty upon the proprietor to satisfy the tax;

Section 9(a) of the 1936 Act, provisions of the Chhattisgarh Cinemas (Regulation) Act, 1952 {for short â€˜the 1952 Actâ€™} and the Chhattisgarh

Cinemas (Regulation) Rules, 1972 {for short, â€˜the 1972 Rulesâ€™}. Rule 2(g) of the 1972 Rules which defines the term â€˜licenceeâ€™ /

â€˜holder of licenceâ€™ (which includes the Manager or Managers nominated under Rule 108); the scope of Rule 108 of the 1972 Rules which

stipulates that the licencee or his nominee to be present; the conditions and restrictions for the holder of licence (under Rule 101 and 120 of the

1972 Rules) etc. were also discussed. It was accordingly held by this Court, that the holder of a licence has a statutory status akin to a

â€˜Swamiâ€™. It was also noted that the rule to grant subsidy was as per the policy notified by the State inviting the parties to make significant

investment across the State and that in most of the cases, it would be the licencee who would be making the actual investment or running the movie

halls or multiplexes sitting at the helm of the affairs, entering into agreement with the builders (who has provided the space for putting up such

movie halls or multiplexes) and meeting the obligations as per the law. It was observed that to make the Rules workable, the word â€˜Swamiâ€™

had to be understood in a constructive manner. The Bench held that the word â€˜Swamiâ€™ cannot be confined to the 'actual owner' who has no

concern with the running or exhibition of a Cinema Hall or a Multiplex, thus declaring that the word â€˜Swamiâ€™ in the 1982 Rules will also

include and mean a person who is meeting the obligation of the 1982 Rules as well, as he is the licencee who has made a significant investment in

making/shaping the space made available by the builder, to be used as a Cinema Hall or Multiplex and also pays entertainment tax duly and

regularly in terms of the Act, Rules and agreements entered by them with the State authorities. The Bench asserted the necessity to give a wider

interpretation; lest it should defeat the very purpose of the 1982 Rules making it unworkable; thus summing up the dictum declaring that the word

â€˜Swamiâ€™ which has been used in the 1982 Rules, especially in â€œSpashtikaranâ€™ would not only include the actual owner but also the

occupier/licencee of the Cinema Hall/Multiplex, for which the test laid down or noticed shall be the guiding principle. It was in the said

circumstances that the decision of the Respondent-Excise authorities of the State to reject the claim for subsidy vide order dated 05.12.2017 was

quashed and the Respondents were directed to take a fresh decision in the light of the judgment and orders passed on that day within three months

as specified. In the light of the detailed judgment as above, the appeal preferred by the State was also disposed of on 16.11.2018 itself.

6. Heard Shri Vikram Sharma, the learned counsel for the Review Petitioners at length. We also heard Shri Sumit Nema, the learned Senior

Counsel assisted by Shri Shri Varun Chopra and Shri Anand Dadariya, Advocates and also Shri Sumesh Bajaj, Advocate, the learned counsel

representing the Non-Applicant/Respondent, at length.

7. Shri Vikram Sharma, the learned Deputy Government Advocate representing the Review Petitioner/State submits that the learned Judges were

not correct in understanding and interpreting the meaning of the word â€˜Swamiâ€™ under the 1982 Rules. The learned counsel submits that Rule

3 of the 1982 Rules stipulated explicitly that the eligibility to get the benefit of subsidy under the Rules is subject to the condition that no Cinema

Hall/Theater is situated within the radius of 10 KMs and this condition having been deleted only by way of an amendment dated 04.03.2010, the

Cinema Halls/Multiplexes constructed prior to the said date are not entitled to have the benefit; which aspect requires to be considered and hence,

these review petitions.

8. The grounds of review in all the three cases are almost similar. The interpretation given to meaning of the term â€˜Swamiâ€™ mentioned under

the 1982 Rules, especially when the said term having not been defined therein, was with reference to meaning of the term â€˜proprietorâ€™ under

Section 2(f) of the 1936 Act and after a thorough scrutiny with reference to the other relevant provisions in the 1982 Rules as discussed already.

The subsidy payable to an eligible person/'Swami' is with reference to the refund of the entertainment tax collected in terms of the 1936 Act. It

was after meticulous analysis of the various provisions, and after testing the scope and object of the relevant rules, that the finding was rendered by

this Court, correctness of which is questioned in these review petitions. It is well settled that the scope of review is very much limited and the

power cannot be invoked by this Court unless there is any ""error apparent on the face of the record"", as repeatedly made clear by the Apex Court

including in the decision reported in Meera Bhanja (Smt.) v. Nirmala Kumari Choudhury (Smt.) {(1995) 1 SCC 170} and various subsequent

judgments. What is the ""error apparent on the face of the record"" is not mentioned in any of the grounds raised in the review petition. It was neither

pointed out in the course of arguments as well, but for reiterating the grounds as it was given in the memorandum of appeal and also as argued

before the Bench which have already been considered and finalized while passing the judgment. The attempt of the review petitioner with

reference to the actual meaning of the term â€˜Swamiâ€™ given in the 1982 Rules is only an ""attempt for rehearing"" of the matter, which is

virtually forbidden while exercising the power of review, as held by the Apex Court.

9. With regard to the other ground that the scope of Rule 3 of the 1982 Rules was not adjudicated by the Court when the matter was finalized, the

contention is that the said Rule insisted that anybody making the investment by constructing a Cinema Hall/Multiplex will be entitled to subsidy only

if there is no other Cinema Hall/Multiplex exists in the radius of 10 KMs.

The said restriction came to be deleted only after the amendment dated 04.03.2010 and as such, the benefit can be sought for only by those parties

whose commencement of the show has begun after 04.03.2010. In the case of persons who have effected the construction when Rule 3 of the

1982 Rules was in operation had virtually volunteered to effect the construction despite the rider and knowing that they will not be eligible to get the

subsidy because of the existence of another Theater/Cinema Hall within the radius of 10 KMs cannot subsequently claim the benefit merely on

deletion of the said clause with effect from 04.03.2010.

10. It is true that such ground was specifically raised from the part of the State in the writ petition filed by the Petitioners {in WP(T) No. 1364 of

2014}. Based on the pleadings raised by both the sides, the issues were formulated by the learned Single Judge; among which point No. â€˜Câ€™,

as given in paragraph 9, deals with this question which is extracted below:

â€œC) Whether despite deletion of the rider of existence of a cinema theater/multiplex within radius of 10 KMs by amendment dated 4.3.2010 the

petitioners would still be disentitled from availing the benefit flowing under the Rules, 1982 on the ground that the petitioners commenced exhibition

of films prior to the amendment?â€

The above point was discussed in detail by the learned Single Judge in paragraph 39 to 42 of the judgment dated 22.01.2016 (WP(T) No. 1364 of

2014} wherein assertion with regard to the prospectivity of the amendment and the contention that it was not having any retrospective operation

has been dealt with. The law laid down by the Apex Court in various rulings such as State of Tamil Nadu v. M/s. Hind Stone & Others; {(1981) 2

SCC 205}, Kolhapur Canesugar Works Ltd. & Another v. Union of India & Others; {(2002) 5 SCC 536} has been referred to, extracting the

relevant portions. Thereafter, the learned Single Judge observed in paragraph 42 that Rule 3 of the 1982 Rules specifically says that, it shall apply

to all Cinema Hall/Multiplex whose construction has started on or after 01.07.1991 and if the rider of not having existing cinema within radius of

10Â KMsÂ wasÂ stillÂ readÂ withÂ theÂ RulesÂ byÂ acceptingÂ theÂ pleaÂ ofÂ the Respondents that it will cease to apply after

04.03.2010, it would throw a very incongruous or contradictory situation. Paragraph 42 is extracted below for convenience of reference:

â€œ42. In the rules with which this Court is presently concerned, Rule 3 relating to applicability provides that it shall apply to all cinema/multiplex

cinema whose construction has started on or after 1.7.1991. If the rider of not having existing cinema within radius of 10KMs is still read with the

rules by accepting the plea of the respondents that it will only cease to apply after 4.3.2010, it would throw a very incongruous or contradictory

situation inasmuch as a multiplex whose construction has been started after 1.7.1991 will not be eligible for exemption even after 10.3.2010

because on the date of commencement of exhibition of films the cinema theater was existing within radius of 10 KMs. Even if it is taken that the

amendment is prospective in its application, any multiplex whose construction was started after 1.7.1991 would be eligible for the benefit of

incentive/grant after 4.3.2010 for whatever period the benefit would remain available under Rule 8(c) as amended on 30.8.2003â€.

11 Coming to the appeals preferred by the State, such a ground was raised from their part; but it is no where pleaded in the review petitions that

the arguments were addressed before the Court with reference to that ground. There is no case for the Review Petitioners that absence of

retrospectivity to the rule was specifically argued before the Court but omitted to be answered while disposing the matter. As mentioned already,

the appeals preferred by the State were heard alongwith Writ Petition (T) No. 47 of 2016 preferred by the 3rd Petitioner in Writ Petition (T) No.

1364 of 2014 and it was on the basis of the detailed judgment in Writ Petition (T) No. 47 of 2016 dealing with the meaning of the term

â€˜Swamiâ€™ as given under the 1982 Rules; that they were finalized on the same day. Insofar as there is no case for the Review Petitioners that

the said ground was pressed/argued, but omitted to be noted by the learned Judges, it cannot be said that there is 'any error apparent on the face of

record'. In other words, what was left out when the matter was argued cannot be sought to be re-introduced while entertaining the review petition;

which otherwise would amount to an instance of ""re-hearing"". This being the position, we are of the view that there is no error apparent on the face

of the record, with regard to non-consideration of the scope of Rule 3 of the 1982 Rules while passing the judgment under challenge.

12. Shri Vikram Sharma, the learned Deputy Government Advocate however made a reference to the law declared by the Apex Court in

Commissioner of Income Tax (Central)-I, New Delhi v. Vatika Township Private Limited; {(2015) 1 SCC 1 paragraph 28} and Purbanchal Cables

and Conductors Private Limited v. Assam State Electricity Board & Another; {(2012) 7 SCC 462 paragraph 32, 33 and 45} to support the

contention that the amendment, unless specifically mentions, shall always be interpreted as 'prospective' and never retrospective. We have gone

through the said judgments and note that there cannot be any dispute with regard to the law laid down therein. But on a closer scrutiny, it is to be

noted that Vatika Township Private Limited (supra) was in respect of a provision for levy of surcharge on tax on undisclosed income. Similarly, in

Purbanchal Cables (supra), it was in respect of interest on delayed payments as to the liability to pay interest on delayed payments under the

Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993. In both the cases, the 'prospectivity/retrospectivity'

was analysed with reference to the additional/new burden imposed upon the assessee/party to enshoulder the same. After discussing the relevant

provisions and the other rulings rendered by the Apex Court, it was held that the same could only be prospective.

13. Coming to the case in hand, it is to be noted that the provision contained herein is not with regard to imposition to any additional burden but is

with regard to the ""relaxation"" given, by deleting the rider under Rule 3 of the 1982 Rules. The Rules of 1982 clearly provide for subsidy in respect

of the Cinema Hall/Multiplex, construction of which was started after 01.07.1991. Of course, there was a rider that the benefit will be available,

subject to the condition that no other Cinema Hall/Multiplex was existing within a radius of 10 KMs. This rider came to be deleted as per the

amendment dated 04.03.2010, whereby the benefit of granting subsidy was widened to bring the then non-eligible lot also within the eligibility net.

Since the benefit of the subsidy was intended to be paid for a total period of '8 years', the persons who were invited to set up the Cinema

Halls/Multiplexes to augment the revenue of the State and who answered the call in the 'positive', despite the hard situations prevailing prior to

04.03.2010, cannot be pushed down for ever, when the barrier was lifted from 04.03.2010 onwards, at least in respect of the remaining period

which alone has been ordered by the learned Single Judge. It is probably for this reason, that the said ground was not pressed or argued when the

appeals were heard and finalized alongwith WP(T) No. 47 of 2016. To put it short, the amendment involved herein, brining about relaxation for

deciding the question of eligibility by deleting the rider which existed earlier under Rule 3 of the 1982 Rules, with effect from 04.03.2010, is

different from a rider bringing in some new burden or liability, to be declared as only prospective. This being the position, the intention of the law

makers to provide the benefit of subsidy, by way of refund of entertainment tax in respect of all constructions of Cinema Halls/Multiplexes after

01.07.1991 should also take in the parties who have started the operation prior to the cutoff date of 04.03.2010, for the remaining period after

04.03.2010, if the benefit under the Rules is a still continuing one. As it stands so, there is no merit in the contention with reference to the alleged

prospectivity of deletion of the rider w.e.f. 04.03.2010. In the said circumstance, we do not find any error apparent on the face of record under this

head as well.

14. Coming to the individual cases, in Review Petition No. 232 of 2020, Shri Sumit Nema, the learned Senior Counsel for the Respondent submits

that the Cinema Hall/Multiplex came to be operational only after 04.03.2010 (Raipur Multiplex commenced operation on 11.02.2011, Bilaspur

Multiplex commenced the operation on 06.09.2012 and Bhilai Multiplex commenced the operation on 14.03.2014). This being the position, the

Grounds â€˜Aâ€™, â€˜Bâ€™ and â€˜Jâ€™ in the review petition with reference to the effect of amendment deleting the 10 KMs rider, are not

applicable and as such, there is no tenable Ground for review. In respect of the other ground as to the ownership, no error apparent on the face of

record is pointed out and as such, no interference is possible under this ground as well. We find considerable force in the said submission.

15. In respect of Review Petition No. 64 of 2020, Shri Sumit Nema, the learned Senior Counsel submits that Annexure P/1 rejection order was only

on the ground of 'ownership', to deny the subsidy, which for the reasons mentioned above, is not applicable for want of any error apparent on the

face of record. With regard to the amendment dated 04.03.2010, the learned Senior Counsel submits that the Multiplex concerned was the ""First

Multiplex"" in the State of Chhattisgarh and as such, even if the 10 KMs rider exists, it is not applicable, as no other Multiplex was available, it being

the first one in the State. In the said circumstance, there is no ground for any interference. The factual position is virtually conceded by the learned

counsel for the State. As such, we hold it against the Review Petitioner.

16. Coming to the Review Petition No. 65 of 2020, it is true that the operation was started on 05.02.2010. It is pointed out that no petition was

pending as on 04.03.2010 and that the very first application claiming refund was made on 25.02.2011, for the period from 01.05.2010 to 03.02.2011.

In view of the specific finding rendered on the point â€˜Câ€™ by the learned Single Judge as discussed above and for the reasons mentioned with

reference to hearing of the matters by the Division Bench without pressing for the said ground as to the 'prospectivity' and the absence of pleadings

in the review petition that the same was argued but omitted to be considered by the Division Bench and further in view of our observation as to the

absence of merit with regard to the scope of amendment bringing in 'relaxation' in the light of eligibility of the persons to have the benefit in respect

of the construction effected on or after 01.07.1991, we are of the view that there is 'no error apparent on the face of record' in this case as well.

17. Coming to Review Petition No. 66 of 2020, it is in respect of Writ Appeal No. 150 of 2016. Since the grounds raised are exactly similar, the

observations made by us in the foregoing paragraphs will govern this case as well and we hold that there is no merit.

18. In the above facts and circumstances, we hold that there is no error apparent on the face of record to invoke the power of review and to grant

the relief. The review petitions fail. They are dismissed accordingly.