

(1996) 04 P&H CK 0027

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 902 of 1982

Rohtak Raj Talkies (P) Limited

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision: April 10, 1996

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Punjab Entertainments Duty Rules, 1956 - Rule 17

Citation: (1996) 113 PLR 568

Hon'ble Judges: Swatanter Kumar, J

Bench: Single Bench

Advocate: Ramesh Kumar, for the Appellant; Raman Sharma, for the Respondent

Final Decision: Dismissed

Judgement

Swatanter Kumar, J.

The petitioner is a private limited company incorporated under the provisions of the Companies Act, 1956. Smt. Jagjit Kaur has filed the present writ petition as Managing Director of the company assailing the orders passed by the respondent-authorities dated 16.1.1981 and the appellate order dated 14.10.1981 made under Rule 17 of the Punjab Entertainment Duty Rules, 1956, hereinafter referred to as the Rules.

2. The facts which are necessary for determination of the controversy fall within a very limited compass.

3. The petitioner-company is running a theatre under the name and style of Messrs Rohtak Raj Talkies (P) Limited, Rohtak, They were granted a licence u/s 5 of the Punjab Cinemas Regulation Act, 1952, in 1959, and the said licence is stated to be operative. On 8.6.1980 and 11.6.1980 the Inspectors of the respondent-authorities exercising their powers under the provisions of the Punjab Entertainment Duty Act inspected the said cinema hall and their records and on checking found certain

irregularities and evasion of Rs. 24.75 and Rs. 221.25. This inspection of the inspectors of the Excise and Taxation Department led to the issuance of a show-cause notice dated 26.12.1980 in Form P.E.D. 5 as prescribed under the Rules. By means of the said notice the petitioners were called upon to be present on 7.1.1981 and produce or caused to be produced the various documents as detailed in the notice and it was further stated in the notice that the authority would frame the assessment order on the basis of best judgment assessment for the period 1.4.1980 to 11.6.1980.

4. The petitioners did not file any reply to the show-cause notice but on a subsequent date they appeared before the authorities as well as produced the records. After examining the records and giving an opportunity to the petitioners to present their case, the Assessment Authority vide its order dated 16.1.1981 found that the petitioners had evaded the payment of excise duty and they were liable to pay a sum of Rs. 1,64,453/- as additional duty in addition to the entertainment duty already paid by them to the extent of Rs. 0261/-.

5. In this order the authority had made proper computation on the basis of the record produced before the authorities and applying the principle of average the above said liability was created upon the petitioners. Copy of the order has been filed on record as Annexure P/2 and the material and relevant portions of the said order read as follows:

"The account books were examined and the irregularities pointed out above, were duly admitted by Shri Sant Lal, Manager vide his statement recorded on that date and placed on the file. On 23.7.80 none turned up despite service and the case remained under adjournments for one reason or the other till the date on which the case had been taken up by the undersigned to proceed further in the matter of assessment of entertainment duty payable by the management for the period from 1.4.1980 to 11.6.1980."

	Rs.
"Entt. duty for the full house per show.	958.40
Less rate @ 20% for slack attendance as discussed above.	191.68
Net entertainment duty payable after deduction per show.	766.72
Amount of entertainment duty works out for 267 shows	
(766.72x267) =	2,04,714.00
Less the amount of entertainment duty already paid in the shape of consumption of Entt. duty stamps during the period under assessment.	40,261.00
Net payable still due	1,64,453.00

6. This computation has been determined by the concerned authorities on the basis of Rule 17 of the Rules which reads as under:

"Assessment"

17. Assessment .. (1) When it appears to the officer authorized by Government u/s 13(1) of the Act that an assessment or payment for admission in cases of free concessions, surreptitious or unauthorised entries should be made, he shall serve upon the proprietor, a notice in form P.E.D. 5.

(a) calling upon him to produce his books of accounts or other documents, which such officer wishes to examine together with any objection which the proprietor may wish to prefer and any evidence, which he may wish to produce in support thereof; and

(b) stating the period or periods in respect of which assessment is produced, provided that the notice shall not relate to a period prior to twelve months from the date of issue of notice.

and he shall fix a date, originally not less than ten days after the date of the service of the notice for producing such accounts and documents and considering any objection, which the proprietor may prefer.

(2) Where the Entertainment Tax Officer is satisfied that the proprietor has duly paid in full the amount of entertainments duty due from him on the entries under assessment, he shall discharge the notice in form P.E.D. 5 served upon him and shall send an intimation to this effect to the proprietor.

(3) Where, after considering any objection made by the proprietor, and any evidence produced in support thereof, the Entertainment Tax Officer determines the liability of the proprietor at a figure higher than the amount of entertainment duty admitted by the proprietor, he shall record an order stating briefly the reasons on which his decision is based, but a failure to state reasons shall not affect the validity of the assessment order.

(4) Every Entertainment Tax Officer shall maintain a register in form P.E.D. 6 in which he shall enter the details of each case instituted under Sub-rule (1) above."

7. The above said order of the authorities dated 16.1.1981 was assailed unsuccessfully in appeal by the petitioners and the Appellate Authority vide order dated 13.1.1982 (copy of the order annexed to the petition as Annexure P/3) upheld the imposition of evasion of entertainment duty but reduced the amount from Rs. 1,64,000/- to Rs. 30,000/-. Dis-satisfied from the said order the petitioners have filed the present writ petition.

8. I have heard the learned counsel for the parties at some length. The only contention which is being raised on behalf of the petitioners is that the Act and the Rules do not give a specific power to the authorities to frame assessment orders on the basis of best judgment assessment. According to the counsel for the petitioners Rule 17 only gives an power to detect evasion of duty and create a liability for the

amount for which the record actually shows evasion of duty and the authorities have no option but to impose a definite amount as may be available from the records produced from the authorities concerned by the assessee.

9. This submission of the learned counsel for the petitioners appears to be misconceived inasmuch as this is not a case of best judgment assessment in that sense of the term. A show cause notice was given to the petitioners to which they failed to file a reply and thereafter they appeared before the authorities and produced all the records which were duly inspected by the authorities concerned. From the relevant portion of the order dated 16.1.1981 reproduced above it is clear that the evasion of duty is admitted by the petitioners. Thus, it is not a case of lack of jurisdiction. The case is one of admitted evasion of duty but what was left to be determined was only the extent of duty imposable upon the petitioners. The counsel for the petitioners even fairly conceded that the duty was actually evaded and the petitioners had no objection to pay such additional liability.

10. As has been recorded even in the order of the Appellate Authority the application of principle of average was necessitated for the reason that during the entire period in question only 18 shows were checked and found to be without discrepancy and had yielded the payment of duty to the extent of Rs. 208/- per show. On all other occasions the discrepancies were detected and total 267 shows were found to have been exhibited by the petitioners during this period. The Appellate Authority while reducing the liability of the petitioners took the average of the evasion of duty on the basis of the two shows checked and computed it to be Rs. 123/- and multiplied this by the remaining shows that is 267 making a total liability of Rs. 32839/-, though rounded up the figure of additional liability to Rs. 30,000/-.

11. The order of the authorities thus can neither be termed as one without jurisdiction because Rule 17 specifically postulates that authorities concerned have to determine the liability to a particular figure and they are required to consider the records and objections if any, produced before them, which admittedly has been done in the present case. The only limitation as is contemplated in Rule 17 is that the authorities concerned cannot take into consideration the period of more than 12 months prior to the issuance of the notice in question. After complying the procedure prescribed in Rule 17 of the Rules, both the initial and the Appellate Authority have come to the conclusion that there is evasion of duty. This itself is not disputed by the petitioners. One of the basic ingredient for invoking the provisions of Articles 226/227 of the Constitution of India is that the petitioner should approach the Court with clean hands and his own conduct has to be equitable so as to entitle him for relief in equity from the Court while exercising discretionary powers under the extra-ordinary writ jurisdiction.

12. The conduct of the petitioners in the present writ petition is sufficiently indicated by the fact that there is admitted evasion of duty. The justifications put forward do not inspire confidence and according to the department they are maintaining

duplicate set of tickets. Liability of payment of duty is a statutory liability and it is the obligation of the petitioners to pay the said duty fairly and without manipulating the record with intention to evade payment of appropriate amount of duty. This conduct of the petitioners alone disentitles the petitioners from seeking any relief from the Court in a writ petition.

13. I find that the impugned order dated 13.1.1992 is well reasoned order and is passed upon reasonable calculations and this cannot be termed as an order passed on only best judgment assessment which will require the backing of a specific statutory provision in an Act. This is a proper and reasonable determination and would not be hit by the doctrine of excessive determination and vitiate the orders passed by the concerned authorities.

14. For the reasons afore-stated the above petition is dismissed without any orders as to costs. The interim order in favour of the petitioners is hereby vacated. They would pay the balance amount to the concerned authorities within one month from today.