(1996) 04 AHC CK 0137

Allahabad High Court

Case No: C.M.W.P. No. 651 of 1993

Manoj Chitra Mandir		APPELLANT
	Vs	
District Magistrate and Others		RESPONDENT

Date of Decision: April 15, 1996

Acts Referred:

- Uttar Pradesh Cinematograph Rules, 1951 - Rule 3, 3(1)

Citation: (1996) AWC 590 Supp

Hon'ble Judges: M. Katju, J; B.S. Chauhan, J

Bench: Division Bench

Advocate: R.S. Misra, for the Appellant;

Final Decision: Dismissed

Judgement

B.S. Chauhan, J.

The Petitioner has challenged the Impugned order dated 11.11.1992, Annexure 10 to the writ petition rejecting the claim of the Petitioner for giving him the benefit of grant-in-aid under the terms of the Government Order issued on 21.7.86, Annexure 1 to the petition, exempting him to pay the entertainment tax fully and partially. The entitlement for the benefits of the said scheme is primarily based merely on two dates; the date on which the application was made for constructing the permanent building of cinema hall as required under the provisions of Rule 3 of the U.P. Cinematograph Rules, 1951 (hereinafter called the Rules) and the date on which the licence was granted for cinematograph exhibition. in the instant case, the Petitioner applied under the said Rules for grant of certificate for construction of the building on 12.5.82. The said certificate was granted by the licensing authority under the said Rules on 20.10.82. Petitioner could not complete the construction within the period stipulated in the certificate and hence filed an application dated 9th August, 1983 for extension of time to complete the construction of the cinema hall and the Respondents vide order dated 13th October, 1983 Armexure 3 to the writ petition, extended the said period. Petitioner was granted licence for cinematograph

exhibition on 11.6.85.

2. The aforesaid Government Order dated 21.7.86 provides that the benefit of the grant-in-aid scheme shall be given only to those licensees, who had filed the application for construction on 1.1.83 or subsequent thereto and to whom the licencees for exhibition of pictures were issued between 1.1.84 and 31.12.85. Shri Sudhir Chandra, learned Senior counsel for the Petitioner has earlier on 26.2.96 submitted that the application dated 9.8.83 for extension of time for completing the construction of the permanent building has to be treated as an application filed under the Rule 3 (1) of the said Rules and the Petitioner becomes entitled for the benefit of grant-in-aid scheme under the said Government Order dated 21.7.86. in support of this argument, reliance is placed on the judgment of Division Bench of this Court passed in writ petition No. 3131 of 1986 "Smt. Meera Srivastava v. State of U.P. and Ors." contained in Annexure 9 to the writ petition, wherein the Division Bench has observed as under:

An extension granted to save lapse of any permission or sanction tantamount to grant of fresh sanction or permission. The extension of sanction to a plan for construction of cinema on 25th April, 1983 would be deemed to grant of fresh sanction which was to remain valid for the period it was extended. in the Instant case, it would be deemed that site plan was approved on that date viz., 1.11.1983 it would like renewal of fresh licence to carry out certain work, trade profession, business, etc. in this view, the extension to sanction plan after 1.1.83 to the public cinema meant moving of application and grant of sanction after 1.1.83.

After giving the aforesaid reasoning, the Division Bench allowed the writ petition and directed the Respondents to refund the said amount of tax to the Petitioner.

3. On behalf of the Petitioner, it is submitted that we must follow the said judgment and allow the writ petition directing the Respondents to refund the amount of entertainment tax deposited by the Petitioner as the Petitioner was entitled for the benefit of grant-in-aid scheme as per the aforesaid Government Order dated 21.7.86. We feel that even if, we agree with the judgment in the case of Meera Srivastava (supra), the Petitioner cannot be entitled to claim refund of the tax as it would amount to unjust enrichment of the Petitioner and this particular aspect of the case has not been considered by this Court while deciding the case of Smt. Meera Srivastava (supra).

4. After hearing this case on 26.2.96, it was listed for further hearing only on the issue of unjust enrichment. Sri S. D. Singh, learned Counsel for the Petitioner sought adjournment on several occasions, Le., on 14.3.96, 5.4.96 and 8.4.96. When this case was called for hearing today, a prayer was made for further adjournment which we declined and proceeded with the case with the help of learned standing counsel as Sri S. D. Singh, learned Counsel did not appear.

5. In H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and Another, , the Supreme Court observed as under:

It is difficult to regard a word, a clause or a sentence occurring in a judgment of this Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment.

6. Similarly, in Amar Nath Om Prakash and Others Vs. State of Punjab and Others, , the Supreme Court has observed that It is needless to repeat the often-quoted truism of Lord Halsbury that a case is only an authority for what It actually decides and not what may seem to follow logically from It.

7. In Sarva Shramik Sangh, Bombay Vs. Indian Hume Pipe Co. Ltd. and Another, , the Apex Court has observed that the observations made in a judgment must be understood in the fact and circumstances of that case. It cannot be treated as having any binding force If a question raised now in a case where the earlier judgment is sought to be relied upon, has neither been in issue nor considered in that judgment.

8. Similarly, in Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd., , the Apex Court had made the following observations:

It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be the complete "law" declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the question which were before this Court. A decision of this Court takes its colour from the question involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support: their reasonings.

9. It is a matter of common knowledge that cinema tickets are sold to the cinema-goers for a price which includes the amount of entertainment tax. It is not the case of the Petitioner that he had paid the said amount of entertainment tax from his pocket. It is neither claimed nor established by the Petitioner. It has nowhere been mentioned in the body of the petition that the amount of entertainment tax had not been passed on to the cinema-goers nor there is such a pleading anywhere in the annexures. It appears that after the decision in Meera Srivastava"s case (supra), the Petitioner moved first time an application dated 3.10.1992 contained in Annexure 6 to the writ petition claiming the refund of Rs. 26,88,529 on the basis of the said judgment. Even in the said application, there is no averment that the Petitioner had not transferred the liability to the consumers or he had paid it from his pocket. The Petitioner made two more representations dated 12.10.1992 and 23.10.1992 contained in Annexures 7 and 8 to the writ petition.

There is no such pleading in those reminders also. The whole case of the Petitioner has been based on the judgment in Meera Srivastava''s case (supra) and it appears that prior to the date of the said judgment, the Petitioner had not made any effort to obtain benefit of grant-in-aid scheme. Petitioner''s claim could have been rejected only on the ground of delay and latches, but Respondent No. 1 passed the impugned order on the ground that the Petitioner was not a party in the case of Meera Srivastava (supra) and hence he was not entitled for any relief. The very vague averment made in paragraph 7 of the writ petition that Petitioner was asked orally by the entertainment tax official to deposit the tax and it would be refunded later on, does not Inspire any confidence as the Petitioner ought to have made an application in writing before the concerned authorities and should have pressed for his claim. Had the Petitioner been granted the benefit of grant-in-aid scheme, entrance tickets of the cinema hall could have been sold at a cheaper rate and the Petitioner was not required to deposit the tax with the Respondents.

10. The purpose of giving the benefit of grant-in-aid scheme is to develop the cinema Industry and to attract the cinema-goers. The entertainment tax is exempted so that public at large can be entertained at a cheaper rate. As the entertainment tax is exempted. State looses the revenue and the cinema-goers are benefited as they become entitled to get the entrance ticket in the cinema hall at a cheaper rate. The licensee of the cinema hall is a medium between the State and the cinema-goers to give that facility. He is neither looser nor gainer. The only gain, he may have is Indirect. i.e., being cheaper rate of tickets he may have a larger number of cinema goers.

11. If the claim of the Petitioner is accepted and we direct for refund of entertainment tax. it would tantamount to unjust enrichment of the Petitioner, because he has realised, the entertainment tax from the cinema-goers. Reliance can safely be placed on the judgment in State of Madhya Pradesh Vs. Vyankatlal and Another, , wherein the Apex Court observed that "only the persons on whom lay the ultimate burden to pay the amount would be entitled to get the refund of the same, and if it is not possible to identify the person on whom had the burden been placed for payment towards the fund, the amount of the fund can be utilised by the Government for the purpose for which the fund is created."

While deciding that case, the Hon''ble Supreme Court relied upon a large number of its earlier judgments, e.g. The Orient Paper Mills Ltd. Vs. The State of Orissa and Others, ; The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others, ; Shiv Shankar Dal Mills and Others Vs. State of Haryana and Others, ; The Newabganj Sugar Mills Co. Ltd. and Others Vs. The Union of India (UOI) and Others, and Sales Tax Officer, Banaras and Others Vs. Kanhaiya Lal Mukundlal Saraf, .

12. In Nawabganj Sugar Mill''s case (supra), the Supreme Court devised a procedure to deal with a situation where equity demanded re-distribution but procedural expensiveness and cumbersomeness effectively thwarted legal action by directing

the Registrar of the High Court to receive and dispose of claim from the ultimate consumer for excess price paid on proper proof.

13. In Amar Nath Om Prakash (supra), the Apex Court observed that a mere declaration that a levy and collection of fee in excess of the required amount would automatically vest in the dealer, the right to get excess amount when in fact he did not bear the burden of It and the morale and equitable owner of it was the consumer public to whom burden had been passed on.

14. Similar view had been taken by the Supreme Court in Indian Oil Corporation Vs. Municipal Corporation, Jullundhar and others, .

15. In State of Rajasthan and Others Vs. Novelty Stores, etc., , the Apex Court observed as under:

The orders of the High Court in the impugned appeals are to be set aside on the sole ground that the Respondents after paying octroi duty have passed on the burden to the consumers and collected from the consumers....

Therefore, the order of refund would be an unjust enrichment for them. This Court has repeatedly held that such a refund should not be ordered....

since Respondents are not entitled to the refund of the amount which is already collected and passed on the burden to the consumers, these appeals are to be allowed.

16. In Entry Tax Officer, Bangalore Vs. Chandanmal Champalal and Co. Etc. Etc., , the Supreme Court held that any direction for refund would amount to unjust enrichment of the Respondents who were merely dealers and had passed on the burden to the consumers. The dealers had not suffered any loss, they had merely passed on the liability.

17. Petitioner cannot claim to have any vested right to enrich himself by deliberately taking away the money, a single paisa of which does not belong to him. The refund of tax. If allowed, would be a windfall for the Petitioner. In Hotel Balaji and others, Vs. State of Andhra Pradesh and others, etc. etc., , the Hon''ble Supreme Court observed as under:

To perpetuate an error is no heroism. To rectify it is the compulsion of the judicial conscience.

18. Thus, the Petitioner cannot be permitted to rely upon the judgment in the case of Meera Srivastava (supra) for refund. in the instant case, as it is not A.W.C. 38 possible to identify the persons, upon whom the liability of the entertainment tax had been passed on by the Petitioner, the said amount of tax must go to the public exchequer. There is no doubt that the Petitioner has realised the entertainment tax from the cinema-goers.

19. There is another aspect of the matter. There is no merit so far as the claim of refund of the entertainment tax is concerned. A mere declaration that the Petitioner is entitled for the benefit of the grant-in-aid scheme would be a matter of academic interest and it will not serve any fruitful purpose. Petitioner was granted licence for cinematograph exhibition on 11.6.1985. Petitioner neither made any effort nor preferred any application for getting the benefit of the said scheme till the case of Meera Srivastava (supra) was decided, as no document is placed on record to show the contrary and It was only after the said decision that Petitioner realised that he would have also obtained the benefit of the said scheme. The benefit of the scheme lasts only for four years as it decreases by 25 per cent per year. We have no reason to believe that the Petitioner was meeting the officials for getting the benefit of the said scheme and he deposited a huge sum of Rupees twenty seven lacs (Rs. 27,00,000) as entertainment tax on oral understanding with the said officials that the said amount would be refunded later on. Just after the decision in Meera Srivastava''s case (supra), Petitioner filed an application for refund of the tax and it was made after more than seven years from the date of grant of licence. Petitioner ought to have pressed his claim before the appropriate authority by moving an application and If he was not getting any relief from the concerned authority, he ought to have approached this Court for issuing an appropriate writ, order or direction to the Respondents to dispose of his claim at the earliest or within a stipulated period of a month or so. There can be no Justification in permitting the Petitioner to agitate the Issue of obtaining the benefit of the said scheme at such a belated stage and he cannot take benefit of the judgment in Meera Srivastava (supra) even otherwise.

20. In view of the above, the writ petition is devoid of any merit is accordingly dismissed. However, there shall be no order as to costs.