

(2012) 08 JH CK 0061

Jharkhand High Court

Case No: Writ Petition (C) No. 3730 of 2005

S.A. Karim @ Syed Ashfaq Karim

APPELLANT

Vs

The State of Jharkhand and
Others

RESPONDENT

Date of Decision: Aug. 1, 2012

Acts Referred:

- Bihar Entertainment Act, 1962 - Section 10

Hon'ble Judges: Aparesh Kumar Singh, J

Bench: Single Bench

Advocate: Indrajit Sinha, for the Appellant; Jalisur Rahman, JC to GP III, for the Respondent

Final Decision: Dismissed

Judgement

Aparesh Kumar Singh

1. Heard learned counsel for the parties. The petitioner is aggrieved by the order dated 06.06.2003 in Certificate Appeal No. 32 of 2004 passed by the Deputy Commissioner Commercial Taxes, Singhbhum East at Jamshedpur whereby the order dated 10th October, 2003 passed by the Certificate Officer, Dhalbhum in Certificate Case No. 1 (CT)/2002-03 has been decided and the matter remanded to the Certificate Officer for recovery of the certain amount.

2. The petitioner has also sought for quashing of the notice dated 02.07.2005 (Annexure - 6) for recovery of Rs. 17,54,290/-. As per the petitioner, the petitioner is trustee of the Karimia Trust which was running a Cinema hall for which the licence was granted in the year 1959 and the petitioner's trust was assessed to pay the entertainment tax under the provisions of Bihar Entertainments Tax since the year 1962.

3. It is not in dispute that the petitioner since the date when the first assessment was made in the year 1962, was paying the entertainment tax without any demur or protest. However, it is the case of the petitioner that by the impugned assessment for the period from January, 2002 to May, 2002, the petitioner became aggrieved and filed an objection before the Certificate Officer seeking the exemption of the entire liability of the tax as it was religious or charitable trust which is entitled to exemption of the tax u/s 10(1)(a) of the Bihar Entertainment Act as has been adopted by the successor State of Jharkhand.

4. It is submitted that the Certificate Officer by order dated 10.10.2003 allowed the objection of the petitioner seeking exemption under the relevant provisions of the Act as stated hereinabove and held that the Certificate Debtor is not liable to pay any part of the certain amount. However, it is submitted that the appeal preferred by the respondents Assistant Commissioner Commercial Tax, Jamshedpur against the original order after delay of 11 months was entertained by the appellate authority-cum-Deputy Commissioner, Singhbhum East at Jamshedpur and by the impugned order passed in the Certificate Appeal No. 32/04-05, the order of the original authority has been set aside holding that the petitioner is liable to pay the entertainment tax assessed for the period and no exemption has been granted to it.

5. Learned counsel for the petitioner does not dispute that claim was made for exemption before the Certificate Officer in the objection filed by the petitioner, although, as per the provisions of the Act in question it is the State Government which has the power to exempt the tax to any person or class of persons by general or special order in case it fulfills the requirement, as prescribed u/s 10 of the Entertainment Tax to the satisfaction of the State Government.

6. Learned counsel appearing on behalf of the respondents by referring to the averments made in the counter affidavit, on the other hand, submits that the petitioner's trust was paying the entertainment tax since it was originally assessed for the first time in 1962 without making any such claim although the said picture hall was run by the trust. It is further stated that no such claim for exemption was made before the State Government. The petitioner being aggrieved by the order of the assessing authority preferred an appeal also before the Joint Commissioner (Appeal), Jamshedpur, Division being JR-ENT-1/02-03 for the said period which was decided by a reasoned order refusing the claim for exemption by categorically stating that the said exemption can only be granted by the State Government under the relevant provisions of Section 10(a) of the Act.

7. In view of the above, the appeal was also dismissed which led to raising of the demand in the nature of the Tax amount before the Certificate Officer on requisition by the assessing authority. However, the Certificate Officer in a wholly illegal manner, entertained the objection of the petitioner relating to the claim of the exemption from the entertainment tax which could not have been done by the Certificate Officer as it can only be done by the State Government, In that way, the

order of the Certificate Officer was itself illegal and he proceeded beyond the jurisdiction and the power conferred upon him. The appeal preferred by the respondent Assistant Commissioner, Commercial Taxes was, thereafter considered in detail on merits by passing a reasoned and speaking order. The learned Deputy Commissioner has set aside the order of the Certificate Officer also in view of the fact that no exemption was granted by the State Government.

8. In view of the above, there is no infirmity with the order and it is submitted that in the aforesaid facts and circumstances the order impugned is fully just legal and proper.

9. I have heard the learned counsel for the parties and carefully gone through record and the impugned order as well as relevant provisions of the Bihar Entertainment Tax Act.

10. From bare perusal of the provision of Section 10 it is apparent that it is only the State Government which has the power to exempt from the payment of the entertainment tax to any person or any class of persons upon fulfillment of condition prescribed therein to the satisfaction of the State Government. No claim for such exemption was allowed by the appellate authority also in view of the specious reason. The Certificate Officer obviously went beyond his jurisdiction while entertaining the petitioner's objection for grant of exemption which could have been only granted by the State Government. The order was wholly beyond the jurisdiction and illegal and was challenged before the appellate forum and appellate authority has rightly set aside the order.

11. From conspicuous of aforesaid facts and circumstance and the provision of law, it appears that the impugned order does not suffer from any infirmity. The petitioner can not escape from the liability as there is no order passed by the State Government granting exemption which is the decision making authority under the provision of Section 10 of the Act. In view of the aforesaid facts, the writ petition is devoid of any merit and is, accordingly, dismissed.