IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.633 of 2015
IN
Civil Writ Jurisdiction Case No. 9487 of 2012

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Nirmala Devi, Wife of Shyam Lal, Proprietor of Shyam Chitra Mandir at Chandra Gokul Road, P. S. + District- Gopalganj.

.... Appellant/s

Versus

1. The State of Bihar
2. The Commissioner - Cum- Principal Secretary, Commercial Tax, Government of Bihar.
3. The District Magistrate, Gopalganj.
4. The In charge, Cinema Magistrate, Gopalganj .
5. The Additional Collector, Gopalganj
6. The Senior Deputy Collector, Gopalganj.
7. The Incharge Deputy Collector, Gopalganj.
8. The Executive Engineer, Building Construction Division, Gopalganj.
9. The Circle Officer, Gopalganj.
10. The Assistant Commercial Tax, Commissioner Circle, Gopalganj.

.... Respondent/s

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Appearance :
For the Appellant/s : Mr. P.K. Sahi, Sr. Adv.
Mr. Ranjan Kumar Srivastava, Adv.
Dr. Sumanth Bhardwaj, Adv.
Mrs.Rajani Gandha, Adv.
For the Respondent State : Mr. Anshuman Singh, AC to PAAG-I

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)
Date: 21-08-2017

Heard learned counsel for the parties.

2. Appellant is the proprietor of one Shyam Chitra Mandir which is a Cinema Hall running at Chandra Gokul Road in the District of Gopalganj. She is aggrieved by the part of the order dated 26.11.2014 passed by a learned Single Judge of this Court in CWJC No.9487 of 2012 by which the prayer of the writ petitioner-appellant for a direction to the respondent authorities to grant exemption from

entertainment tax in view of the State Government's policy has been refused.

Case of the writ petitioner-appellant.

3. The writ application was filed being aggrieved by the order/direction dated 24.04.2012 issued under the signature of Senior Deputy Collector, Gopalganj for sealing the Cinema Hall of the writ petitioner. It was the case of the writ petitioner-appellant that the Cinema Hall was sealed without considering the case of the writ-petitioner-appellant as no opportunity of hearing was given to her. The writ petitioner-appellant stated that she had filed application for renewal of licence of the Cinema Hall for the period 2010-11, but the same was not considered due to alleged non-payment of entertainment tax.

4. According to the writ petitioner-appellant the dispute in fact was over the entitlement of the writ petitioner-appellant to get exemption from entertainment tax for two years in view of the State government's incentive/exemption policy. Because she was insisting for grant of said exemption and was denying her liability to pay the tax, the renewal application was not considered. It is because of this reason the writ petitioner-appellant while praying for quashing of the order dated 24.04.2012 by which the Cinema Hall of the petitioner was sealed, also prayed for commanding the respondents to grant exemption from entertainment tax in view of the State Government's

policy issued from time to time and lastly vide gazette notification dated 22.07.2009.

5. Since the first part of her grievance regarding sealing of Hall and non-renewal of licence has been taken care of by the learned Single Judge, the present appeal has been confined to the issue of grant of exemption from entertainment tax only. As regards the grant of exemption it is specific case of the writ petitioner-appellant before the learned Single Judge as well before us is that a Gazette notification published by the State Government vide S.O.91 dated 3rd October, 2007, the Commissioner, Commercial Taxes and Principal Secretary to the Government declared the exemption policy saying that:

> *"In exercise of power conferred by Sub-Section (2) of Section 10 of the Bihar Entertainment Tax Act, 1948, the Governor of Bihar is pleased to exempt the running and closed Cinema Houses for up-gradation and modernization thereof for a period of six months or recovery of 75% of their capital investment whichever is earlier from the date of receipt of application in this behalf.*
>
> *2. The limit of capital investment for exemption from recovery of entertainment tax shall be as follows;*
>
> *a. for the places classified in category (A) under Section 3B-25 lacs*
>
> *b. for the places classified in category (B) under Section 3B-15 lacs.*
>
> *c. for the places classified in category (C) under*

Section 3B-10 lacs.

d. for the places classified in category (D) under Section 3B-7.5 lacs.

3. This notification shall come into force with effect from the date of its issue."

6. In order to give effect to the exemption policy, the Commissioner-cum-Principal Secretary, Commercial Taxes Department, Government of Bihar vide notification no.4475 dated 08.10.2007 constituted a Committee for the purpose of estimation of capital invested in a Cinema Hall for modernization and up-gradation, a Committee was constituted in each of the Districts of the State. According to this notification, there were three members of the Committee namely:-

(i) the District Officer of the concerned District

(ii) the Executive Engineer of the Building Construction Department or in absence of Executive Engineer, District Officer can take an Executive Engineer from any other Works Department and;

(iii) the Assistant Commissioner, Commercial Taxes in whose circle the Cinema Hall falls.

7. The notification also shows that proprietors of Cinema Halls who have taken the modernization and up-gradation work shall submit an application with estimate for this purpose to the Member Secretary who will bring it to the notice of the Chairman. After the

modernization and up-gradation work is over, the same will be informed by the proprietor of the Cinema Hall to the Member Secretary, who will in turn place the actual estimation of the capital investment with all papers before the Committee and according to decision taken by the Committee the proprietor of the Cinema Hall would get benefit of exemption in terms of S.O. 91 dated 03.10.2007.

8. The writ petitioner-appellant submitted an application in this regard for the benefit of exemption in terms of S.O. 91dated 3.10.2007. A copy of the application addressed to the Member Secretary, Gopalganj with an estimate is available on the record as Annexure-11 to the supplementary affidavit. It is the case of the writ petitioner-appellant that after the modernization and up-gradation work was over a request was made vide letter dated 12.11.2008 (Annexrue-12 to the supplementary affidavit) through Assistant Commissioner, Commercial Taxes, Gopalganj for getting the assessment/evaluation of the actual work and to grant benefit of exemption. According to the writ petitioner-appellant while her application was still pending for estimation of the actual work and grant of benefit, the Commissioner-cum-Principal Secretary, Commercial Taxes Department issued S.O.138 dated 22.07.2009 published in Bihar Gazette wherein it was provided that by virtue of sub-section (2) of Section 10 of the Bihar Entertainment Tax Act, 1948, the Governor of Bihar is pleased to exempt the running and

closed cinema houses for up-gradation and modernization thereof for a period of two years or recovery of 75% of their capital investment (which will be calculated on the basis of tax payable under Section 3B of the Bihar Entertainment Tax Act, 1948) whichever is earlier from the date of receipt of application in this behalf. The limit of capital investment for exemption from recovery of entertainment tax remained the same as stated in the S.O. 91 dated 3.10.2007. The terms and conditions as to constitution of the Committee and method of taking decision by the said Committee for the purpose of grant of exemption which were earlier contained in notification no.4475 dated 8.10.2007 were now introduced as it is in S.O. 138 dated 22.07.2009. In terms of sub-clause (B) of Clause 3 under S.O.138 dated 22.07.2009 there was a departure from the earlier S.O. 91 dated 3.10.2007 inasmuch as earlier there was no provision in S.O. 91 dated 3.10.2007 that on application with estimate submitted by the proprietor of the Cinema Hall to the Member Secretary, the Committee will communicate its decision within one month to the applicant and in case of non-receipt of communication the proprietor may start modernization and up-gradation work. Earlier vide notification no.4475 dated 9.10.2007 it was provided that proprietor shall submit his/her application with estimated cost to the Member Secretary and Member Secretary will be bringing it to the notice of the Chairman. The proprietor of Cinema Hall was not required to wait for a decision of the Committee and would have proceeded to start and complete the work. Sub-clause (c) and (d) of Clause 3 under S.O.138 dated 22.07.2009 were introduced which reads as under:-

> *"(c) The proprietor shall give intimation to the Member Secretary about the modernization and up-gradation with complete information of expenditure thereon along with evidence and the committee within two months after evaluation of the real capital investment, shall intimate the decision to the proprietor and the concerned circle-in-charge.*
>
> *(d) If the committee within two months do not intimate its decision on the matter contained in clause (c) to the proprietor, then after completion of two months from the date of intimation in respect of modernization and expenditure, he will be entitled to exemption contained in this notification." (Annexure-2 to the writ application)."*

9. The writ petitioner-appellant has brought on record documentary evidence to show that, in her case, the information relating to completion of modernization and up-gradation work was submitted vide Annexure-12 to the supplementary affidavit on 12.11.2008, but no action had been taken by the State authorities and her request to get the actual calculation of the expenses incurred by her which were capital investment eligible for the benefit of exemption under S.O. 91 dated 3.10.2007 remained pending. There was no communication as to why the State authorities were not acting

upon her request. The petitioner had a valid licence for the year 2010 which is evident from Annexure-3 to the writ application, however when she applied for renewal in the year 2011 it was not renewed on the ground of non-payment of entertainment tax. The appellant claims that she was entitled for the benefit of exemption referring to the earlier exercises, therefore at this stage once again the issues regarding exemption from entertainment tax were taken up by the State authorities.

10. The Executive Engineer, Building Construction Division, Gopalganj vide his letter no.98 dated 8.1.2011 wrote to the In-charge, Cinema Magistrate, Gopalganj to enquire into the matter of modernization and up-gradation of the Cinema Hall. During the inspection carried out by him, he found that the proprietor of the Cinema Hall had invested about Rs. 12,00,000/- on account of expenditure for modernization and up-gradation (Annexure-4 to the writ application). In response to the letter no.98 dated 8.1.2011 written by the Executive Engineer, Building Construction Division, Gopalganj, the Deputy Collector, In-charage, Gopalganj vide his letter no.95 dated 27.1.2011 wrote to the Executive Engineer, Building Construction Division, Gopalganj that he should make available the measurement book regarding expenditure of Rs.12,00,000/-. Thereafter, the Executive Engineer vide his letter no.363 dated 17.3.2011 responded to the Deputy Collector, In-Charge, Gopalganj

giving details of the expenses incurred in the modernization and up-gradation of the Cinema Hall the total being Rs.11,90,000/-. A perusal of the said letter, which is available as Annexure-6 to the writ application, would show that although the details of the expenditure have been mentioned in the letter, but there was no reference to any measurement book.

11. The proprietor/writ petitioner/appellant thereafter represented to the office of In-charge Cinema Magistrate, Gopalganj as also the Assistant Commissioner, Commercial Taxes, Gopalganj and informed them that in view of the notification of the State government from time to time and lastly vide notification dated 22.07.2009 her Cinema Hall is entitled to exemption from entertainment tax and therefore, the demand of entertainment tax was not proper.

Stand of Respondents 3 to 7 in Writ Court

12. A counter affidavit was filed on behalf of the respondent nos.3 to 7 who are the functionaries of State of Bihar. There is no counter affidavit on behalf of the Executive Engineer, Building Construction Division, Gopalganj (respondent no.8), the Circle Officer, Gopalganj (respondent no.9) and the Assistant Commissioner, Commercial Tax, Circle Gopalganj (respondent no.10). In the counter affidavit, apart from justifying the sealing of the Cinema Hall on the alleged ground of default in payment of

entertainment tax since 30.1.2010, the respondents have brought on record a copy of the letter no.550 dated 15.11.2011 by which the Assistant Commissioner, Commercial Taxes, Gopalganj Circle informed the Additional Collector, Gopalganj that none of the applications/papers sent by the proprietor of the Cinema Hall have been entered in the incoming register of the office or at the counter and there is no details of the expenses, therefore without application and expenses vouchers it would not be proper to consider the request for exemption. A copy of this letter has been sent to the petitioner vide letter no.999 dated 22.11.2011 issued under the signature of Additional Collector, Gopalganj to the writ-petitioner. The answering respondents have taken a stand that the writ-petitioner-appellant has suppressed all these material facts which were the reasons for not allowing exemption from entertainment tax and sealing of the Cinema Hall.

13. No rejoinder to the counter affidavit was filed as according to the writ petitioner-appellant the case was running in the daily cause list under the heading “Admission-III” and was not expected to be heard in near future, but all of a sudden it was listed under the heading “To Be Mentioned,” the prayer for time to file reply to the counter affidavit was refused by the learned Single Judge who proceeded to pass the impugned order. The learned Single Judge issued certain direction to the Collector, Gopalganj to examine the

issue with regard to renewal of the licence upto the year 2015, but as regards claims of exemption the learned Single Judge took a view that the petitioner would not be entitled for the same because she had failed to submit the requisite voucher.

Submissions in Appeal

14. In appeal before us, the appellant has reiterated that her Cinema Hall had taken up the modernization and up-gradation work in the year 2007-08 when S.O. 91 dated 3.10.2007 was in force. An application in this regard with estimate was submitted to the Member Secretary as per the Government's notification no.4475 dated 8.10.2007. Under this notification, there was no need for a decision of the Committee before taking up the work and the proprietor of the Cinema Hall had only to inform the Member Secretary once again after completion of work. A duty was cast upon the Member Secretary of the Committee to get the actual evaluation of the work done and the capital investment by the appellant and then all those documents were to be placed before the Committee constituted for this purpose.

15. Learned senior counsel for the appellant submits that it was the Committee constituted vide notification no.4475 dated 8.10.2007 and later reiterated vide S.O. No.138 dated 22.07.2009 who was competent to take any decision with regard to grant or denial of the exemption, therefore the refusal to consider the case of the appellant for grant of exemption by the Assistant Commissioner,

Commercial Taxes, Gopalganj Circle cannot be taken as a refusal by the competent authority. The next submission of the learned senior counsel for the appellant is that in compliance of the notice vide letter no.999 dated 22.11.2011 issued by the office of the Collector, Gopalganj, the appellant submitted a reply along with evidences in relation to modernization and up-gradation of the Cinema Hall. The said reply was duly received in the office of the Assistant Commissioner, Commercial Taxes Department, Gopalganj on 7.12.2011.

16. Further in paragraph 22, the appellant has submitted that she is always ready to produce required relevant documents along with vouchers with regard to up-gradation and modernization of the Cinema Hall.

Stand of the Respondents Reiterated

17. On behalf of the State and its authorities the stand taken in the counter affidavit has been reiterated. The factual aspect that the matter was running in the cause list under the heading "Admission-III" and all of a sudden it was listed under the heading "To Be Mentioned", a prayer for time to file reply to the counter affidavit was made but the same was refused by the learned Single Judge, has not been denied and in fact cannot be denied in view of what is stated in paragraph 6 of the impugned order.

Consideration of Submissions

18. We have heard learned counsel for the parties and perused the records. The appellant has claimed with specific statements in the writ application as well as supplementary affidavit filed on her behalf that pursuant to the S.O. 91 dated 3.10.2007 and the notification no.4475 dated 8.10.2007 as contained in Annexure-1 and 2 respectively to the writ application, she had made an application for exemption from entertainment tax along with estimate of the proposed cost of modernization and up-gradation of the Cinema Hall before the Member Secretary, Gopalganj on 27.12.2007. A copy of the same has been brought on record by way of Annexure-3. It is also stated that on completion of modernization and up-gradation of the Cinema Hall it was brought to the notice of the Member Secretary as well as the District Magistrate, Gopalganj vide Annexure-4 series. Up to this stage, the statements have been made in paragraph 7 of the writ application, in reply thereto the respondents in their counter affidavit have stated that these statements need no comment. It is, therefore, clear from the pleadings of the parties that these assertions of the petitioner were not denied by the State respondents. If this is the position then the plea taken by the Assistant Commissioner, Commercial Taxes in letter no.550 dated 15.11.2011 saying that there is no entry of the documents in the incoming register of his office and at the counter looses its significance. The appellant has enclosed those applications/letters and the same have not been denied by the

answering respondents, therefore we have reasons to believe that the appellant had submitted the application for exemption giving the estimate of expenses and then on completion it was brought to the notice of the Member Secretary. It is also not denied by the respondents in the counter affidavit that In-charge, Cinema Magistrate, Gopalganj through letter no.90 dated 8.1.2011 asked the Executive Engineer, Building Construction Division, Gopalganj for estimation of the cost incurred in up-gradation and modernization of the Cinema Hall and thereafter vide letter no.95 dated 27.1.2011 Deputy Collector, Incharge had asked the Executive Engineer to make available the details of the expenditure and the measurement book. It is not in dispute that the Executive Engineer, Building Construction Division, Gopalganj was a member of the Committee constituted for the purpose of consideration of cases with regard to exemption from entertainment tax. He vide his letter no.363 dated 17.3.2011 informed the Deputy Collector, Incharge giving details of the expenses of Rs.11,90,000/-. It appears that no measurement book was sent by the Executive Engineer which may be because of the fact that the earlier notification no.4475 dated 8.10.2007 does not talk of supervision of ongoing up-gradation work and/or measurement of the work. The pleadings of the respondents are clearly silent as to why and under what circumstances the State authorities did not take any action on the application for exemption submitted by the appellant after getting the information regarding completion of the work. The respondents have not even brought on record any evidence to show that the matter relating to grant of exemption from entertainment tax to the present appellant was placed before the duly constituted committee for this purpose. The appellant has specifically pleaded that she had submitted a reply to the letter no.999 dated 22.11.2011 and had also submitted evidences in relation to the modernization/up-gradation of her Cinema Hall which was received in the office of Assistant Commissioner, Commercial Taxes at Gopalganj on 07.12.2011. This statement of the appellant has not been controverted by the Assistant Commissioner who is respondent no.7 in the writ application as well as in appeal. The statement of the appellant is worth consideration in the facts of the present case because admittedly she could not get an opportunity to file a rejoinder before the learned Single Judge as the case was listed all of a sudden under the heading "To Be Mentioned" with other Cinema matters and came to be disposed of refusing the prayer for time to file reply to the counter affidavit. The principles of natural justice has suffered somewhere because of disposal of the case after its listing all of a sudden giving no time to the appellant to respond. In this appeal she has made a categorical statement that she is always ready to submit required documents including vouchers with regard to modernization and up-gradation of her Cinema Hall.

19. We are of the considered opinion that a government

policy for exemption from entertainment tax is to encourage the cinema industry in the State. Any policy of this nature is brought only because the State wants to motivate the entrepreneurs to come forward and run their business in the State so that apart from the opportunity for employment there should also be an increase in the revenue of the State. An entrepreneur who goes by the promise made by the State under an industrial policy for different segment of the industries acquires a right to get his/her case considered for the benefits envisaged under the policy of the government and to get the benefits which have accrued to him/her by virtue of his/her believing the words of the government and acting upon the same changing his/her position by way of bringing capital investment through different sources, one of them may be by way of loan. It is thus incumbent upon the State and its authorities to consider such cases of grant of benefits of a policy with a positive bent of mind. In the process of consideration care should be taken to ensure that an unbecoming person/entrepreneur should not be allowed to take benefit of the policy by playing fraud upon the State. At the same time the genuine applicants/entrepreneurs requesting for benefit because they have fulfilled the condition precedent to entitlement of the benefit must not be allowed to suffer because of some lacuna which are either not relevant or may be taken care of by giving proper opportunity to the applicants/entrepreneurs to place on record the required information or documents.

20. In the present case, from the pleadings of the parties and the materials available on record, we come to a conclusion that the case of the appellant has not been taken up in right perspective. There was a dispute with regard to payment of entertainment tax which was delaying the renewal of Cinema Hall licence, the appellant was pressing hard for grant of exemption and under this pressure the Assistant Commissioner, Commercial Taxes, Gopalganj Circle came out with letter no.550 dated 15.11.2011 addressed to the Additional Collector, Gopalganj in which vague grounds seems to have been taken that the documents relating to modernization/up-gradation of the Cinema Hall are not entered in the incoming register and/or at counter and there is no detail of the expenses.

21. In the opinion of this Court, prior to letter no.550 dated 15.11.2011 the In-charage Cinema Magistrate and Deputy Collector, Gopalganj as also the Executive Engineer, Building Construction Division, Gopalganj had exchanged the letters and details of the expenses and the correspondences in this regard would also show that there were some decision with regard to taking up the cases of grant of benefit on account of entertainment tax in the meeting held on 2.5.2008 under the Chairmanship of the then District Officer. Apparently, these documents were also not looked into by the Assistant Commissioner, Commercial Taxes, Gopalganj Circle before

writing his letter no.550 dated 15.11.2011. As per the Government's decision the entire matter should have been placed before a Committee constituted for this purpose. Except the Committee no other authorities had power to take decision on this issue. The letter no.550 dated 15.11.2011 written by Assistant Commissioner, Commercial Taxes, Gopalganj Circle is therefore, not a final decision on this issue. Reliance is placed on the judgment of the Hon'ble Supreme Court in the case of Commissioner of Police, Bombay V. Gordhandas Bhanji reported in AIR 1952 SC 16. Paragraph '17' reads as under:-

> *"It is clear to us from a perusal of these rules that the only person vested with authority to grant or refuse a licence for the erection of a building to be used for purposes of public amusement is the Commissioner of Police. It is also clear that under R. 250 he has been vested with the absolute discretion at any time to cancel or suspend any license which has been granted under the rules. But the power to do so is vested in him and not in the State Government and can only be exercised by him at his discretion. No other person or authority can do it."*

22. Having reached the above conclusion we declare that last part of the order as contained in Annexure-8, 9 and 10 of the impugned order are not sustainable. The learned Single Judge has stated that the letter no.550 dated 15.11.2011 is the basis for rejecting the entitlement of the appellant for grant of remission in the

entertainment tax.

23. In view of our declaration hereinabove that it is the Committee constituted for this purpose who will be competent to take decision on this issue, while setting aside the aforesaid part of the order passed by the learned Single Judge, we direct the said Committee to convene a meeting within a period of three months from the date of receipt of this order and consider the case of the appellant for grant of exemption from entertainment tax as per the relevant Government's policy prevailing during the said period and take a decision in this regard in terms of the policy. The committee shall also keep in mind the observations of the Court hereinabove and in case any document or evidence is required for the purpose of grant of exemption, the appellant shall be given an opportunity to provide the same. In any case the efforts should be to act in a positive manner without raising any irrelevant issues.

24. In the case of Hindustan Zinc Ltd. Vs. Rajasthan Electricity Regulatory Committee reported in (2015) 12 SCC 611 the Hon'ble Supreme Court has held that the contents of a policy document cannot be read and interpreted as statutory provisions. Too much of legalism cannot be imported in understanding the scope and meaning of clauses contained in policy formulations. The Committee shall keep in mind that it is a case of up-gradation said to have been taken by appellant in the year 2007-2008, therefore too much of

legalism in the matter of consideration of her claim at this stage will be subversive of Government's own policy to encourage entrepreneurs.

25. The appeal is allowed with the observations and directions made above.

(Rajeev Ranjan Prasad, J)

Arvind/-

Ajay Kumar Tripathi, J.- I Agree.

(Ajay Kumar Tripathi, J)

AFR/NAFR	AFR
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