IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13228 of 2002

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M/S Sudha Talkies, Manpur, Gaya a partnership firm thrugh its partner Sri Basist Narain Singh, son of Late Ram Khelawan Singh, resident of New Area Beldari Tola, District – Gaya.

.... Petitioner

Versus

1. The State of Bihar
2. The Commissioner of Commercial Taxes, Bihar, Patna
3. Joint Commissioner of Commercial Taxes (Administration), Gaya
4. The Deputy Commissioner of Commercial Taxes, Gaya Circle, Gaya.
5. The Assistant Commissioner of Commercial Taxes, Gaya Circle, Gaya
6. The Gayal Municipal Corporatino, Gaya through its Administrator District – Gaya.
7. The Executive Offier, Gaya Municipal Corporation Gaya.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Y.V. Giri, Sr. Advocate
Mr. Raj Kishor Prasad, Advocate

For the State : Mr. Ajay Kumar Rastogi, AAG-10
Mr. Rohitabh Raj, AC to AAG-10

For Gaya Municipal Corp.: Mr. R.K. Priyadarshi, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 08-03-2018

This writ petition was filed in the year 2002 and the grievance of the writ petitioner is that in terms of a notification issued on 11.03.1985 by the State of Bihar under the Bihar Entertainment Tax of 1948, petitioner's establishment namely a Cinema Talikes falls a Manpur Block under category 'K' of the notification bearing S.O. No. 774 dated 14th of August, 1985 and the petitioner is only liable to pay entertainment tax @ 12% in accordance with aforesaid notification but treating the area where the cinema talkies is situated to be within the municipality of Gaya, tax @ 22% is being collected.

Notices were issued, affidavits and counter affidavits were filed and the dispute crystallized only with regard to the question as to whether the establishment of the petitioner is situated within the limits of the municipality or a gram panchayat beyond the limits of the municipality. We directed the State Government to clarify the position and also directed the petitioners to implead the Municipal Corporation, Gaya, and the Municipal Corporation was directed to produce notification issued under Section 6 of the Bihar and Orissa Municipal Act, 1972 to show that the area (Nauranga Gram Panchayat within Manpur Block) falls in the territorial limit of Municipality of Gaya. The Chief Executive Officer of Municipality appeared and filed a counter affidavit and indicated that the so-called notification issued with regard to Nauranga Gram Panchayat of Manpur Block under Section 6 of the Bihar and Orissa Municipalities Act, 1922 is not available with the Municipality and they indicated that the State Government be directed to produce the notification. We, therefore, on 4th of August, 2011, directed the State Government to produce the notification issued under Section 6 bringing Nauranga Gram Panchayat of Manpur Block, Thana No. 360, District – Gaya within the jurisdiction of Municipal corporation Gaya, and during the course of hearing on 12.12.2017, and even today, the State Government is unable to produce before us any notification bringing the Panchayat in question namely, Nauranga Gram Panchayat of Manpur Block within the territorial limit of municipal corporation Gaya and learned counsel for the State and the municipal corporation having failed to demonstrate before us that the area falls with the municipal corporation we cannot permit the State Government to charge tax at the rate of 22% or above, which is notified to be paid by an establishment situated within the territorial limit of a municipality or a municipal corporation.

That being so, the State Government or local authorities are only entitled to charge tax under the Bihar Entertainment Tax Act from the petitioner with regard to the category in which the establishment of the petitioner is situated, and during the course of hearing of this writ petition today, learned senior counsel for the petitioner invited our attention to item No. 11 of the notification dated 4th of August 1985 and argued that Manpur falls in category 11, and therefore, the tax has to be collected at 12% of the gross collection capacity for every show, whereas learned counsel for the State argued that it would fall under category 10 and the rate of tax would be 15%.

Having heard learned counsel for the parties, we are of the considered view that the contention of the petitioner that the area does not fall within the limits of the municipal corporation of the municipality is correct and, therefore, it can be safely construed that the petitioner is not liable to pay entertainment tax at 22% under category 5 which is applicable only to areas notified within the limits of Gaya municipal corporation. The petitioner does not fall in this category and therefore the act of the respondents in proposing to recover tax at 22% of the gross collection cannot be sustained and to that effect the impugned order annexure 19 has to be and is accordingly quashed. As the State Government and the respondents have miserably failed to demonstrate before this court that the area in question falls within the jurisdiction of Gaya Municipal Corporation, and, therefore, petitioner liable to pay tax @ 22% under category 5. Having held so, now the question would be as to whether the petitioner's establishment to fall in category 10 or category 11 and the petitioner entitled to or liable to pay tax at 15% or 12%, as this is a mixed question of law and fact warranting certain enquiry with regard to the actual location of the petitioner's establishment and applicability on the notification dated 18th of June, 1985 to petitioner's establishment, we direct that on the petitioner filing a certified copy of this order along with the competent assessing authority empowered to assess tax under the Bihar Entertainment tax Act, 1948. The authority shall hear the petitioner, take note of the notification, location of petitioner's establishment and after considering the objections and the submissions of the petitioner shall pass speaking order indicating the rate and amount at which the petitioner is to pay tax and the category or the heading i.e. clause 10 or 11 of the notification which will be applicable in the case of the petitioner. The entire exercise for determining the aforesaid question for the concerned period shall be concluded within a period of sixty days from the date of receipt of the certified copy of this order.

With the aforesaid, this application is allowed and disposed off.

(Rajendra Menon, CJ.)

(Rajeev Ranjan Prasad, J.)

Arvind/Rajeev

AFR/NAFR	**NAFR**
CAV DATE	**NA**
Uploading Date	**13.03.2018**
Transmission Date	**NA**