

Vaishnav Talkies Vs. State of U.P. and Others

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SooperKanoon Citation : sooperkanoon.com/484184

Court : Allahabad

Decided On : Oct-12-2000

Reported in : 2000(4)AWC3117

Judge : S.R. Alam and ;R.K. Agarwal, JJ.

Acts : Uttar Pradesh Cinematograph Rules, 1951 - Rules 3, 3(3) and 44; Uttar Pradesh Cinema (Regulation) Act, 1955 - Sections 10

Appeal No. : C.M.W.P. No. 25831 of 1992

Appellant : Vaishnav Talkies

Respondent : State of U.P. and Others

Advocate for Def. : C.S. Singh, Adv. and ;S.C.

Advocate for Pet/Ap. : Govind Krishna, Adv.

Judgement :

R. K. Agarwal, J.

1. The petitioner Vaishnav Talkies. Budhnapur, Azamgarh, through its partner Shri Subedar Singh has filed the present petition seeking a writ of certiorari quashing the order dated 6th July. 1992 passed by the District Entertainment Tax Officer respondent No. 3 on behalf of the District Magistrate, Azamgarh filed as Annexure-

22 to the writ petition and also a writ of mandamus commanding the respondents to grant the licence to the petitioner under the grant-in-aid scheme dated 18th July. 1989 and to grant the facilities under the said grant in aid scheme.

2. The petitioner claims itself to be a newly constructed cinema hall. According to the petitioner, on 20th July. 1991 the petitioner submitted an application seeking permission for the construction of a permanent cinema building under Rule 3 of U. P. Cinematograph Rules, 1951 (hereinafter referred to as the rules) before the District Magistrate, Azamgarh respondent No. 2. The respondent No. 2 asked for reports from the various authorities, i.e., S.D.O. Budhanpur, Tehsildar Budhanpur, Superintendent of Police. Azamgarh. Executive Engineer P.W.D. Temporary Division. Azamgarh and Entertainment Tax Officer. Azamgarh all of whom submitted their reports. The petitioner has set up a case that the A.D.M. (Administration) who was at the relevant time Officer Incharge of Entertainment Tax himself made a spot inspection and after being duly satisfied vide order dated 24th September. 1991 had asked the respondent No. 2 for countersigning on the site plan and also strongly recommended for grant of permission for raising the construction of the new cinema hall on the proposed land of the petitioner. According to the grounds taken by the petitioner in this petition, it was under a bona fide impression that the permission for raising the construction has been granted by the A.D.M. (Admn.) who was the Officer Incharge on behalf of the licensing authority and started construction of the permanent cinema hall. The petitioner vide letter dated 30th September, 1991 informed the respondent No. 2 about the start of construction of the cinema building. After having constructed the cinema building, the petitioner made an application for grant of licence on 6.4.1992 before respondent No. 2 i.e., the licensing authority on which the respondent No. 2 called for reports from the concerned authorities.

3. It appears that since no formal permission under Rule 3 (3) of the rules had been granted to the petitioner by the District Magistrate/ Licensing Authority, the District Entertainment Tax Officer on behalf of the District Magistrate/Licensing Authority, Azamgarh informed the petitioner vide letter/order dated 6.4.1992 that the petitioner would not be entitled for the benefit of grant-in-aid scheme under the G.O. dated 18th July. 1989. The petitioner was further informed that further action

on the application for grant of licence can be taken if the petitioner is prepared to take a licence without grant-in-aid. The letter/order dated 6th July, 1992 is under challenge in the present petition.

4. We have heard Shri Govind Krishna, learned counsel for the petitioner and Shri C. S. Singh, learned standing counsel who represented all the respondents.

5. The learned counsel for the petitioner submitted that the petitioner fulfilled all the requirements for grant of permission under Rule 3 (3) of the rules for construction of permanent cinema building and was under bona fide impression that the Addl. District Magistrate (Admn.)/Executive who had recommended for the countersigning of the site plan and for giving permission for construction of the cinema building according to the site plan had in fact granted permission to the petitioner to start construction of the cinema building and therefore the condition in the impugned letter/order dated 6th July, 1992 that Rule 3 (3) of the rules have been violated is not correct. He, further submitted that in the present case since all the formalities have been completed, the grant of permission for starting construction of a permanent cinema building in terms of Rule 3 (3) was only a mere formality which could not adversely affect the grant of licence under the grant-in-aid scheme to the petitioner. Shri Govind Krishna further invited the attention of the Court to the G.O. dated 27th August, 1998. copy of which has been filed as Annexure-1 to the supplementary affidavit of Shri Subedar Singh sworn on 14th November. 1999, in which the State Government has taken a decision that where the cinema owners have started construction of the cinema building after making an application to the licensing authority and there was a delay in grant of permission, the benefit of grant-in-aid scheme should be given after imposing the compounding fee and he therefore submitted that in view of the G.O. dated 27th August, 1998, at best the petitioner is liable to pay compounding fee for the violation of Rule 3 (3) of the rules, but the benefit of grant-in-aid scheme cannot be denied.

6. Shri C. S. Singh, learned standing counsel, on the other hand, submitted that admittedly in the present case the licensing authority had not given the permission as required under Rule 3 (3) of the rules and therefore the construction made by

the petitioner would be treated as violative of Rule 3 (3) of the rules. In this view of the matter the benefit of grant-in-aid scheme cannot be given to the petitioner as the same has been specifically excluded under clause 4 of G.O. dated 18th July. 1989. In support of the aforesaid plea the learned standing counsel relied upon a decision of this Court in Civil Misc. Writ Petition No. 83 of 1996. Chhanga Prasad Sahu and another v. State of U. P. and others decided on 8th May, 1999, wherein this Court has held as follows :

'As far as licence is concerned, no doubt, licence cannot be refused and that is why the order be passed for compounding the same. But for granting permission in paying entertainment tax, observance of Rule 3 of the rules is a condition precedent as given vide clause 3 in G.O. dated 18.7.1989 (Annexure-2). Since the petitioner has not complied with and the authorities have reached to the conclusion that it has not been complied with, therefore, the petitioner is not entitled to seek any concession under the Government Order dated 18.7.1989 (Annexure-2).-

The learned standing counsel further relied upon a decision of this Court in the case of Shitla Prasad Dubey and another v. State of U. P. and others. AIR 1999 All 260 and submitted that non-payment of composition charge is a valid ground for not granting the licence and certificate under Rule 3 (3). He further submitted in paragraph 31 of the reports, this Court had held that the benefit of the subsequent clarification of the grant-in-aid scheme can be given even where there is no violation of Rule 3 (3), but this can be done only if the composition charge was paid before 31.3.1990 which has not been done in the present case.

7, Having heard the learned counsel for the parties, we find that it is not in dispute that the petitioner had made an application for grant of permission to construct permanent cinema building as far back as on 20.7.1991 in accordance with Rule 3 of the rules. The licensing authority had asked for reports from the various authorities on the said application which was also submitted. The Additional District Magistrate had also recommended for the countersigning of the site plan as also for permission to start construction of the permanent cinema building vide recommendation made on 24.9.1991. Only thereafter, the petitioner had started

construction of the permanent cinema building and had applied for grant of licence to exhibit the cinematograph films on 6.4.1992. No doubt a formal order/permission under Rule 3 (3) of the rules has not been passed/granted by the licensing authority and the petitioner has completed the construction of the cinema building without there being any order under Rule 3 (3) of the rules. Under Section 10 of the U. P. Cinema (Regulation) Act. 1955 (hereinafter referred to as the Act), the State Government has been empowered to grant exemption subject to such condition and restrictions as it may impose from any of the provisions of this Act or any rules made thereunder. Under Rule 44 of the rules, the composition charges prescribed for granting exemption as per Rule 3 (3) is Rs. 50.000. The respondent No. 3 while passing the impugned order on 6th July, 1992 had found the violation of Rule 3 (3) of the rules. This Court while entertaining the writ petition on 29th July, 1992 had issued an interim mandamus in the following terms :

'The standing counsel prays for and is granted six weeks time to file C.A., R.A., if any, shall be filed within two weeks thereafter. List for admission on 30th August, 1992.

Let an interim mandamus go to the respondent No. 2 grant licence to the petitioner for exhibiting films under the grant-in-aid scheme dated 18.7.1989 during the pendency of the writ petition within a period of six weeks or show cause by filing counter-affidavit within one month. List on 30.8.1992.

Sd./- M. L. Bhatt, J.

Sd./- R. B. Mehrotra. J.

29.7.1992'

The writ petition was admitted on 9th November. 1992 when the Court had further passed the following interim order on 9.11.1992 which is quoted below :

'Issue notice.

The respondents are directed to issue provisional licence to the petitioner under the grant-in-aid scheme dated 18.7.1989.

Sd./-A. Singh, J.

Sd./- D. P. S. Chauhan

9.11.1992'

The stay matter came up for consideration before the Court on 2nd December. 1996 when the Court had confirmed the interim order dated 9.11.1992 along with the order dated 12.1.1993. The order dated 2nd December. 1996 is reproduced below :

'In this writ petition an interim order was passed on 9.11.1992 after the counter-affidavit was filed by the respondents in September. 1992 and after hearing the learned counsel for both the sides. At this stage nothing has been shown on behalf of the, respondents as to why the said interim order is not to continue. In that view of the matter, the interim order dated 9.11.1992 along with the order dated 12.1.1993 is hereby confirmed.

Sd./-A. Chakraborti

2.12.1996'

It appears that the petitioner have been granted a provisional licence under the grant-in-aid scheme dated 18.7.1989 and has been exhibiting cinematograph films.

8. The learned standing counsel has not denied the issuance of the G.O. dated 27th August, 1998 in which benefit of grant-in-aid scheme has been allowed to these cinema owners who have constructed the permanent cinema building after making application under Rule 3 of the rules but without there being any order under Rule 3 (3) of the rules which violation is compoundable. Thus, the petitioner is entitled for the benefit of grant-in-aid scheme as he had already made an application under Rule 3 for permission to construct the cinema building before starting construction. The decision of this Court in the case of Chhanga Sahu (supra) would not be applicable to the facts of the present case in view of the subsequent G.O. dated 27th August. 1998 which has in effect modified the rigours

of clause 4 of G.O. dated 18th July, 1989. So far as the decisions in the case of Shitla Prasad Dubey (supra) is concerned, it will also not apply to the facts of the present case inasmuch as the State Government is yet to pass an order levying composition fee for violation of Rule 3 (3) of the rules.

9. In view of the foregoing discussions, we hold that the District Entertainment Officer, respondent No. 3 was not Justified in imposing the condition of not giving the benefit of grant-in-aid scheme while issuing the letter dated 6th July, 1992 and the said condition is hereby quashed. The violation of Rule 3 (3) is compoundable and the composition fee leviable is Rs. 50,000 under Rule 44 of the rules. The petitioner has already been granted a provisional licence for exhibiting the cinematograph films under the grant-in-aid scheme on 18th July, 1989. Therefore, it will be subject to the orders which may be passed by the State Government for granting exemption for violation of Rule 3 (3) of the rules.

10. In the result the writ petition succeeds and is allowed.