

CASE NO.:
Appeal (civil) 5455 of 2007

PETITIONER:
Amit Kumar

RESPONDENT:
State of U.P. & Ors

DATE OF JUDGMENT: 28/11/2007

BENCH:
C.K. Thakker & Altamas Kabir

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 5455 OF 2007
(Arising out of SLP(C) No.7731 of 2005)

Altamas Kabir, J.

1. Leave granted.

2. This appeal by way of Special Leave involves the question as to whether entertainment tax was payable by the appellant in respect of a fashion show held at Gorakhpur in Uttar Pradesh on 9th July, 2000 at St. Andrews Inter College for the selection of "Mr. Gorakhpur" and "Miss Gorakhpur".

3. As it would appear from the materials on record, the appellant was found to be the organiser of the aforesaid fashion show which had been held without the permission of the District Magistrate. On the basis of enquiry, it was found that entertainment tax had not been paid for performing the aforesaid fashion show and accordingly a show cause notice was issued to the appellant which was replied to by the appellant. Not being satisfied with the explanation given, the District Magistrate assessed a sum of Rs.43,270.00 by way of entertainment tax for the programme and a further sum of Rs.20,000.00 by way of penalty which was imposed upon the Cambridge Intertia Group under whose banner the appellant is said to have arranged the fashion show.

4. In his reply to the show cause notice dated 11th July, 2000 under Section 12 of the Uttar Pradesh Entertainment and Betting Tax Act, 1979 (hereinafter referred to as 'the 1979 Act'), the appellant contended that he was only a choreographer of Cambridge Intertia Group which arranged the programme. The appellant contended that the programme, as arranged, did not attract the provisions of the aforesaid Act and that the show cause notice was without jurisdiction. A specific stand was also taken that Section 5 of the 1979 Act provided that any programme relating to entertainment could not be held without prior

permission but that since the programme was not entertainment within the meaning of the Act, the same had been held by the Institution with prior intimation to the office of the District Magistrate. It was reiterated that the programme was of a competitive nature and there was no element of entertainment involved. Furthermore, neither was any cultural, music and dance programme conducted nor was any amount collected from the spectators by way of entry fee. According to the appellant, the show was organised as a charity show with the specific purpose of publicising the event, inasmuch as, there was a proposal initiated by Ms. Neetu Nathaniel (Respondent No. 7 herein) for establishing an Institute of Art, Fashion Designing and Modelling at Gorakhpur in collaboration with the Respondent No. 8, Smt. S. Mishra, proprietor of the Cambridge Intertia Group.

5. Another stand taken by the appellant in the reply to the show cause notice was that Miss Neetu Nathaniel was the Director and Smt. S. Mishra was the Convener of the show and that the entire programme had been conducted under the direction of Miss Neetu Nathaniel. In his reply, the appellant requested the District Magistrate to issue notice to Miss Neetu Nathaniel who could enlighten him as to the alleged collection of money against tickets sold and funds collected from the organisers. Since the appellant was only a Choreographer and his main function was to provide information about the candidates participating in the programme, he denied that he had been involved with the holding of the programme other than as a Choreographer for the show.

6. As mentioned hereinabove, by his order dated 24th July, 2000 the District Magistrate, Gorakhpur did not accept the explanation offered by the appellant and also the contention that Miss Neetu Nathaniel was, in fact, the Director of the programme with Smt. S. Mishra as the Convener. The District Magistrate chose to rely on the report submitted by his Department as to the collection of entry fee from the spectators and funds from the organisers. Reference was also made to other shows of similar nature held in Gorakhpur where fashion shows had been held after depositing the entertainment tax payable in respect thereof and after obtaining the permission of the District Magistrate. Rejecting the explanation offered by the appellant, the District Magistrate came to the conclusion that the appellant had collected a total sum of Rs.1,62,500.00 from the spectators and a further sum of Rs.25,000.00 from the five organisers at the rate of Rs.5,000/- from each organiser. It was on that basis that a demand was raised by way of entertainment tax for Rs.43,270.00 at the rate of 30% on the total collected amount of Rs.1,87,500.00.

7. The appellant challenged the said order of the District Magistrate by way of Civil Misc. Writ Petition No. 2166/2002 in the Allahabad High Court. The same was taken up for disposal on 22nd February,

2005 and on behalf of the writ-petitioner/appellant herein, it was sought to be reiterated that the writ-petitioner/appellant was only the Choreographer and had no function in holding the fashion show. It was also urged that the programme in its entirety was charitable in nature and being for an educational purpose, was exempted under Section 11(3) of the 1979 Act.

8. Negating the claim of the writ-petitioner/appellant, the High Court held that a fashion show could not be said to be in aid of education and was only meant to entertain the public. On the said finding, the Allahabad High Court dismissed the writ petition against which the appellant filed SLP(C) No. 7731 of 2005 wherein leave has been granted.

9. Mr. Rameshwar Prasad Goyal, learned Counsel appearing for the appellant, reiterated the submission which had earlier been made before the District Magistrate and the High Court and submitted that the fashion show being merely competitive in nature and being organised for the sake of publicity in connection with the proposed establishment of an Institute of Art, Fashion Designing and Modelling by the Cambridge Intertia Group, the provisions of the 1979 Act were not at all attracted and the show cause notice which had been issued by the District Magistrate was without jurisdiction or in excess of the jurisdiction vested in him under the Act.

10. Mr. Goyal urged that both the District Magistrate as also the High Court had wrongly arrived at the conclusion that the appellant was responsible for organising and holding the fashion show. He reiterated the submission made earlier before the other authorities that it was the Respondent Nos. 7 and 8 who were the real organisers and convener of the fashion show and the liability of entertainment tax, if any, had been wrongly foisted upon him.

11. On behalf of Respondent Nos. 1 to 6, it was, however, submitted by Mr. S.K. Dviwedi, the Additional Advocate General for the State of U.P., that the submissions made on behalf of the appellant would be disproved on a perusal of the advertisement which was published on the occasion, being Annexure CA-2 of the Counter Affidavit filed on behalf of the Respondent Nos. 1 to 5. Mr. Dviwedi submitted that from the said advertisement it would be clear that while Cambridge Intertia Group as an Institute of Art, Fashion Designing and Modelling was presenting the fashion show, the Respondent No. 7 was the Director, the Respondent No. 8 was the Programme Manager and the appellant was the Programme Director and Choreographer on the occasion which was to be attended by a Minister of the State Government together with various persons shown as the sponsors of the programme.

12. Mr. Dviwedi also submitted that since the Minister was the Chief Guest at the fashion show, various arrangements had been made so that the programme could be conducted safely and without any

disturbance. Furthermore, one of the sponsors shown in the advertisement, namely, Mr. Pradeep Tekriwal, had specifically written to the authorities informing them that he was neither a sponsor of the programme nor did he have anything to do with the programme including making any monetary contribution.

13. Mr. Dviwedi submitted that both the District Magistrate and the High Court had rightly held that the stand taken on behalf of the appellant that the fashion show was merely a charity show was not tenable and it had been rightly held that the same was for the purpose of entertainment and that large sums of money had been collected from the spectators on the occasion. Mr. Dviwedi also submitted that despite the efforts of the appellant to shift the liability of payment of the entertainment tax demanded by the Respondent Nos. 7 and 8, it had been established that it was the appellant who had master-minded the show with the full knowledge that the same was being held for the purpose of entertainment and that entertainment tax was payable in respect thereof under the 1979 Act.

14. Mr. Dviwedi submitted that no case had been made out on the appellant's behalf for interference with the orders passed by the District Magistrate which were upheld by the High Court.

15. We have carefully considered the submissions made on behalf of the respective parties and we are inclined to agree with Mr. Dviwedi that the fashion show was held with full knowledge that entertainment tax was payable in respect thereof and that though tickets may not have been issued in respect of the programme and only invitation cards had been issued, the same was merely a subterfuge for the purpose of evading and/or avoiding payment of entertainment tax. It is difficult to believe that the fashion show was held with the object of educating prospective students who would be interested in joining the Institute of Art, Fashion Designing and Modelling and was, therefore, exempt under Section 11(3) of the 1979 Act. As the advertisement referred to above indicates the object of the show was to invite people to come and watch the new world of glamour and modelling and to see the world of exotic fashion in Gorakhpur itself.

16. We, therefore, see no reason to interfere with the order passed by the District Magistrate, Gorakhpur and the High Court and we have no hesitation in dismissing the appeal, but there will be no order as to costs.

17. While parting with the appeal, however, we cannot but remark upon some of the statements made in the Writ Petition filed by the appellant before the High Court, particularly those made in paragraphs 11 and 13 which, in our view, had little or no relevance to the issue involved in the present appeal.