

PETITIONER:
STATE OF UTTAR PRADESH & ORS.

Vs.

RESPONDENT:
VINAY KUMAR JAIN

DATE OF JUDGMENT: 19/11/1996

BENCH:
B.P. JEEVAN REDDY, K.S. PARIPOORNAN

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

B.P. JEEVAN REDDY, J.

The Uttar Pradesh Entertainments and Petting Tax Act, 1979 provides for two modes of levy of entertainment tax on cinemas. Sub-section (1) of Section 3 says that subject to the provisions of the Act, there shall be levied and paid on all payments for admission to any entertainment, other than an entertainment to which Section 4 or Section 4-A or Section 4-B applies or a compounded payment is made under the proviso to this sub-section, an entertainment tax at such rate..... The proviso to sub-section (1), which provides the other mode of levy, reads:

"Provided that a proprietor of a cinema in a local area having a population not exceeding one lac, may, in lieu of payment under this sub-section, pay a compounded payment to the State Government on such conditions and in such rate as the State Government may from time to time notify, and different rates of compounded payments may be notified for different categories of local areas."

The respondent is running a cinema theatre in a local area having a population of less than one lakh. He took advantage of the aforesaid proviso and has been entering into composition agreements from year to year. The year for this purpose means the financial year. On February 22, 1995, the respondent filed an application before the "District Magistrate, District Entertainment Tax Office, Hardoi" requesting for permission to reduce the seating capacity of his cinema theatre from 540 to 450 for the ensuing financial year 1995-96. On March 24, 1995, the respondent submitted an application opting for the composition system for the ensuing financial year, 1995-96. No order were passed by the District Magistrate on either of the said applications whereupon the respondent approached the Allahabad High Court by way of a writ petition. By an order dated My 9, 1995, the High Court directed the Collector to consider the

applications and to pass order thereon. Accordingly, the District Magistrate passed orders on May 31, 1995 rejecting the application for option, inasmuch as the application exercising option for composition scheme was supposed to be linked up with the request for reduction of the seating capacity. The respondent filed writ petition [No. 1773 of 1995] in the Allahabad High Court challenging the order dated May 31, 1995. A Division Bench of the High Court has allowed the writ petition saying that there is nothing in the Act or the Rules empowering the District Magistrate to ignore or change the seating capacity indicated in the petitioner's option application merely because for the previous financial year the seating capacity indicated by the applicant was higher. The High Court observed, "the petitioner has been given liberty to reduce or increase the number; of seats in various classes irrespective of the fact as to what he has been stating in Form 'R' of the previous financial year". The High Court observed further that the reasons given by the District Magistrate, viz., there will be a loss of revenue to the State by reduction of seating capacity is not a relevant reason. The correctness of the judgment of the High Court is challenged by the State of Uttar Pradesh in this Special Leave Petition.

Leave granted.

Rule 24-A of the Uttar Pradesh Entertainments and Betting Tax Rules, 1981 deals with compounded payment of tax. Sub-rules (1) to (4) of Rule 24-A are relevant for our purpose and must be set out in full:

"24-A. Compounded payment of Tax.--

(1) The proprietor of a cinema opting to make compounded payment of entertainment tax under the proviso to sub-section (1) of Section 3 of the Act shall submit his written option in duplicate to the District Magistrate before the last date in Form 'R' appended to these rules declaring the total number of shows to be exhibited in a day, number of seat in the cinema classwise and the rates of tickets at full price and on reduced price if any.

(2) The option once exercised shall be valid for the period of a financial year.

(3)(i) The District Magistrate shall within a week of the receipt of the application, communicate to the proprietor the gross collection capacity and the weekly tax payable by the cinema in Form 'S'.

(ii) The gross collection capacity shall be calculated by multiplying the number or seats on various classes in a cinema by the respective current ticket rates (including payment for admission and entertainment tax thereon) and multiplying the sum so derived by such number of shows as the proprietor of the cinema declares to give in a day.

Explanation.-- For purpose of this sub-rule 'the number of seats in

various classes in a cinema' means the maximum permissible number of seats in various classes mentioned in the licence thereof and shall include any increase in the maximum number of seats by an amendment allowed by the Licensing Authority.

(4) The proprietor shall strictly adhere to the declaration under sub-rule (1) and shall obtain permission of District Magistrate before effecting any change in the number of seats, the ticket rate and the number of shows. The licensing authority shall have the power to revise the compounded amount to tax upwards if the gross collection capacity increases as a result of such permitted change."

Form 'R' referred to in sub-rule (1) is an application indicating the applicant's option to be governed by the composition scheme under the proviso to Section 3(1) of the Act. It is both an application exercising option and also a declaration containing several particulars including the total number of seats in the cinema, the classes into which they are categorised and ticket rates. At the foot of the application the applicant has to append a declaration to the effect: "Certified that information given above is correct; kindly permit compounded payment of tax. I shall abide by all the conditions and restrictions imposed in this behalf". Form 'S' referred to in sub-rule (3) is the Form in which the District Magistrate grants the permission to the applicant to come under the composition scheme. This order also contains several relevant particulars including the number of seats in the cinema, the classes into which they are divided, the rate of tickets for each class and so on. Clauses (2), (3) and (4) of Form 'S' read thus:

"(2) He is hereby directed to--

(i) make payment of weekly tax as per rules.

(ii) inform the undersigned at least three days in advance if any show/shows is/are proposed to be held at reduced price of tickets.

(iii) obtain permission for any change in respect of number of seats, number of shows and ticket rates.

(iv) make available to the inspecting authorities a copy of the order along with the copy of the application for option and declaration if required by him.

(3) No rebate shall be permitted for any show not held.

(4) for the purposes of calculating the gross collection capacity, the maximum permissible number of seats mentioned in the licence and where the maximum number is increased by amendment by the licensing authority, such increased number shall be taken into account."

[Emphasis added]

These conditions appear to be consistent with sub-rule (4) of Rule 24-A, both of which deal with post-composition agreement period. We are, however, not concerned with that situation in this case.

It is necessary to read closely Rule 24-A and the above Forms for the purpose of appreciating and adjudicating the controversy arising herein. Sub-rule (1) of Rule 24-A says that a proprietor of a cinema theatre seeking to opt for the compounded payment of entertainment tax has to submit Form 'R' with all the particulars mentioned therein. Sub-rule (3) requires the District Magistrate to communicate his order in Form 'S' to the proprietor of the application Form 'R' mentioning in his order the gross collection capacity [G.C.C.] and the weekly tax payable by the cinema theatre. The Explanation appended to sub-rule (3) is of crucial significance. It says that for the purpose of sub-rule (3), the expression "the number of seats in various classes in a cinema" means the maximum permissible number of seats in various classes mentioned in the licence thereof and shall include any increase in the maximum number of seats by an amendment allowed by the licencing authority. Sub-rule (4) says that the proprietor shall strictly adhere to the declaration in Form 'R' and shall obtain the permission of the District Magistrate for effecting any change in the number of seats, the ticket rate and the number of shows. The licencing authority is empowered to revise the compounded amount of tax upwards if the G.C.C. increases as a result of such permitted change.

It is equally evident - and also beyond dispute - that the words "the maximum permissible number of seats in various classes mentioned in the licence thereof" in the Explanation to sub-rule (3) mean and refer to the relevant provisions of the Uttar Pradesh Cinemas Regulation Act, 1955 and the U.P. Cinematograph Rules, 1951. [The Uttar Pradesh Cinemas Regulation Act, 1955 repeals the Cinematograph Act, 1948 but at the same time continues the rules made thereunder and it is by virtue of the said provision contained in Section 12 that the 1951 Rules made under the repealed enactment are continued and are treated as the Rules made under the 1955 Act.] The 1955 Act regulates all aspects of the construction of a cinema theatre including the seating capacity therein. Clause (v) of Rule 2 of the Cinematograph Rules defines the expression "licence" in the following words:

"(v) 'Licence' means a written authorisation by the Licensing Authority to give cinematograph exhibitions and granted in the form set out in Appendix I to these rules and shall be subject to necessary modifications or amplifications in accordance with any terms or conditions imposed under sub-section (3) of Section 5 of the Act."

Section 3 of the U.P. Cinemas [Regulation] Act, 1955 deals with "licence". The U.P. Entertainments and Betting Tax Act, 1979 or the Rules framed thereunder, it may be mentioned, do not define the expression "licence".

Sub-rule (1) of Rule 14 of the 1951 Rules provides that "the Licensing Authority shall determine the maximum number of seats for each class separately and the same shall be specified in the licence and prominently displayed near the entrance door to every class in the cinema". The Form of licence granted to cinema theatre is prescribed in appendix-

1 to the said Rules. Condition No.8 of the licence reads: "(8) that the total number of seats in the auditorium and the seats for each class shall not exceed the number specified in the Schedule thereto appended nor shall the number and description of fire appliances, exhaust fans, electric fans or sanitary requirements be less than those therein specified". The Schedule to the Rules contains the particulars of seats class-wise. Now, therefore, when the Explanation to sub-rule (3) of Rule 24-A of the Entertainment Tax Rules speaks of "the maximum permissible number of seats in various classes mentioned in the licence thereof", it refers to "the maximum number of seats for each class separately" mentioned in the licence as per Rule 14 of the 1951 Rules read with Form-I Licence. In short, according to the aforesaid Explanation, the District Magistrate shall take the maximum number of permissible seats specified in the licence issued under the U.P. Cinema [Regulation] Act and the Cinematograph Rules as the basis for working out/calculating the G.C.C. and the weekly tax payable by the cinema theatre and which figures the mentions in Form 'S'. The District Magistrate is not concerned with the actual number of seats fixed in a cinema theatre for the purposes of Rule 24-A. He will only look to the maximum number of ssats specified in the licence [Form-I issued under the U.P. Cinematograph Rules, 1951] and take that as the basis for determining the G.C.C. and the weekly tax payable. This fact necessarily means that if any person warts to enter into a composition agreement with a reduced seating capacity [i.e., reduced with reference to the previous financial year], he must go to the Authority under Rule 14 of the U.P.Cinematograph Rules, 1951*, have his licence amended and produce his licence before the authority under Rule 24-A to take the maximum so specified therein as the basis for calculating the G.C.C. and the weekly tax payable. The fact that the District Magistrate mentioned in Rule 24-A of the Uttar Pradesh Entertainments and Betting Tax Rules, 1981 also happens to be the licencing authority under Rule 14 of the U.P.Cinematograph Rules, 1951 for the time are two difference in law. In law, they are two different authorities acting under two different statutory provisions. It is open to the government to amend Rule 4 of the 1951 Rules and specify any other person or authority as the licencing authority. There is yet another aspect which requires to be clarified in view of the submissions made by Sri Srivastava, learned counsel for the respondent. Though sub-rule (3) of Rule 24-A uses the expression "shall", it does not mean that

*Though Rule 14 does not expressly provide for alteration or amendment of the licence, it is obvious that the power to "determine the maximum number of seats" conferred upon the licencing authority necessarily implies and includes the power to amend it including the increase or reduction in the maximum seating capacity specified in the licence.

the District Magistrate is bound by the particulars as stated in the application Form 'R'. The District Magistrate is entitled to - and is obliged to - verify the correctness of the particulars stated in the application Form 'R' including the particulars relating to the maximum number of seats and their classes. So far as the maximum number of seats and the classes are concerned, the only document he has to see is the licence issued under the Cinematograph Rules only if he is satisfied with the correctness of the particulars stated in the application Form 'R' that the District Magistrate comes under an obligation to issue the

order in Form 'S' with relevant particulars. This is the position if any proprietor wants to enter into a composition agreement for the ensuing financial year with reduced seating capacity. It may be mentioned that the case before us deals with such a situation. In other words, the case before us does not deal with the situation where the proprietor, having entered into a composition agreement, is seeking to reduce his seating capacity during the currency of the composition agreement. This is a case where the respondent is asking the District Magistrate to enter into a composition agreement with him taking the seating capacity in his cinema theatre as 450 whereas the maximum seating capacity of his cinema theatre as per the licence issued under the Cinematograph Rules is 540. The District Magistrate has no power or authority to agree to such a request - nor can the respondent make such a request, as explained hereinabove so long as the licence of the cinema theatre shows the maximum seating capacity as 540.

For the purposes of this case, it is not necessary to deal with or interpret sub-rule (4) of Rule 24-A, which deals with the post-composition agreement period. The language of the sub-rule leaves much to be desired. It would be in the fitness of things that the Government of Uttar Pradesh recasts the sub-rule at its earliest to make its meaning clear. Such a course would obviate avoidable litigation in the State.

In short, the position emerging from the above discussion may be stated in the following terms:

(1) A proprietor of a cinema theatre seeking to opt to be governed by the compounded payment of entertainment tax system shall have to submit an application in Form 'R' with all the necessary particulars as specified in the said Form, truly and fully.

(2) On receipt of the application Form 'R', it is open to the District Magistrate to verify the correctness of the particulars stated in Form 'R'. If he is satisfied with the correctness of the particulars in Form 'R', he shall issue an order in Form 'S' mentioning therein the G.C.C. of the cinema theatre and the weekly tax payable by it. While calculating the G.C.C. and the weekly tax payable, the District Magistrate shall take the maximum number of seats in various classes mentioned in the licence [issued under the U.P.Cinematograph Rules, 1951] as the basis.

(3) The option once exercised shall be valid for the relevant financial year to which it pertains.

(4) It is not open to any proprietor to seek to enter into a composition agreement indicating a lesser seating capacity than the maximum mentioned in his licence [issued under the U.P.Cinematograph Rules, 1951] nor is it open to the District Magistrate to take any other figure of seating capacity than the maximum seating capacity mentioned in such licence. The remedy of any proprietor who wants to have the seating capacity of his cinema theatre reduced is to approach the licencing authority under Rule 14 of the U.P.Cinematograph Rules, 1951 and have his licence amended accordingly. Only then can that amended seating capacity be taken into consideration for the purposes of Rule 24-A of the Uttar Pradesh Entertainments and Betting Tax Rules, 1981.

Now, coming back to the facts of this case, the judgment under appeal was rendered by the High Court on March 25, 1996 by which date the Financial Year 1995-96 [for which the respondent had opted through his application dated March 24, 1995] had practically come to an end. We are told that because of the absence of any composition agreement,

the respondent's cinema theatre was governed by the main limb of sub-section (1) of Section 3 of the Uttar Pradesh Entertainments Act and not by the proviso to sub-section (1) of Section 3. During the current financial year, 1996-97, it is stated, the respondent's cinema theatre is operating with the reduced capacity as per the impugned orders of the High Court. We do not know whether any composition agreement has been entered into for the financial year, 1996-97 or whether the respondent's cinema theatre is governed by the admission system provided by the main limb of sub-section (1) of Section 3 of the Uttar Pradesh Entertainments Tax Act. These are the matters for the appropriate authorities to look into and pass necessary consequential orders.

Inasmuch as the judgment under Appeal does not refer to or deal with the aforesaid relevant Rules and has also not correctly appreciated the legal position flowing therefrom, we are obliged to set aside the impugned in the High Court. It is open to the respondent to adopt such proceedings and take such steps as are open to him in law in the light of the legal position adumbrated herein.

The appeal is allowed in the above terms. No costs.

A copy of this judgment shall be communicated by the Registry of this Court to the Secretary, Finance Department [Entertainment Tax], Government of Uttar Pradesh, for appropriate action.