

STATE OF U.P. AND ORS.

v.

M/S. S.K. THEATRE PRODUCTIONS AND ORS.

FEBRUARY 9, 2007

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

Taxation—Subsidy—Subsidy for promotion of production of films in regional languages by 'Film Policy'—Subsidy was restricted to 25% of the processing charges only and not of the entire cost of production—Plea that other film producers given subsidy on the entire cost of production—Held: Matter remanded to High Court for deciding after considering as to how was the relevant clause of the Film Policy understood by the Department and what subsidies were given to other filmmakers—Uttar Pradesh Film Policy 2001—Clause 23.3.

Interpretation of Statutes—Interpretation of Government Circulars—Held: When two interpretations of a circular are possible, the relevant factor for its interpretation is, how the circular has been understood by the issuing development.

In order to promote film production in regional languages of U.P., State Government gave various incentives including trade tax exemptions, tax incentives, subsidy etc. Respondent herein produced a regional film after due approval and claimed subsidy under clause 23.3 of 'Uttar Pradesh Film Policy 2001'. The authorities restricted the subsidy to 25% of the processing charges only and not 25% of the entire cost of producing the film. Respondent filed Writ Petition challenging the order, and the same was allowed.

In appeal to this Court, appellant contended that subsidy payable was only 25% of the cost involved in the processing of the film in the laboratory (subject to a maximum of Rs. 10 lacs.)

Respondent contended that other film producers had been granted 25% of the entire cost of production.

Allowing the appeal, and remanding the matter to High Court, the Court

HELD: 1. If other film producers were granted subsidy of 25% of the

A cost of production of the film (subject to a maximum limit of Rs.10 lacs) then the writ petitioners should also be given the same benefits. However, if that was not done then the subsidy should be 25% of the cost of film processing in the lab (subject to a maximum of Rs.10 lacs) and not the entire cost of the film production. [Para 10] [394-D]

B 2. A relevant factor for interpretation if there is some ambiguity in a circular, is how the circular has been understood by the department itself which issued it. This is particularly so when there are two interpretations possible, as is in the present case. Matter remanded to the High Court for a fresh consideration after calling for the relevant material in order to understand how clause 23.3 of the Film Policy was understood by the department itself and what subsidies have been given to other film producers. [Paras 11 and 12] [394-E-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 653 of 2007.

D From the final Judgment and Order dated 7.12.2005 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Writ Petition No. 3281 (M/B) of 2004.

Dr. R.G. Padia, Arvind Varma, Kamendra Mishra and Rajeev Dubey for the Appellants.

E Ravindra Kumar, Javed Mahmud Rao, Shahid Ali Rao, Pavan Sharma, Nitish Massey and B. Vijayalakshmi Menon for the Respondents.

The Judgment of the Court was delivered by

F **MARKANDEY KATJU, J.** 1. Leave granted.

2. This appeal has been filed against the impugned judgment of the Allahabad High Court (Lucknow Bench) dated 7.12.2005 in Writ Petition No.3281 (MB) of 2004. Heard learned counsels for the parties and perused the record.

G 3. The facts of the case are that to promote film production in the State of U.P. the State Government constituted a Society named Film Bandhu in the year 2001 which was registered under the Societies' Registration Act. Various Government orders were issued to give facilities for film production in U.P. and a film policy was made. Various incentives were also declared to be given to the films made in regional languages in U.P. such as Avadhi, Bhojpuri and

H

Braj etc. These various incentives are mentioned in the booklet entitled 'Uttar Pradesh Film Policy 2001', copy of which has been supplied to us. These include trade tax exemptions, tax incentives, subsidy, two weeks' compulsory exhibitions of regional films, etc. A

4. The respondents claim subsidy under clause 23.3 of the Film Policy. The said clause 23.3 states:- B

"23.3 Subsidy : A subsidy of 25% of the cost of production, subject to a maximum limit of Rs.10 lac, will be provided to films made in the State in any one of the above mentioned languages. This subsidy will be paid to film processing labs for the expenditure actually incurred in the making of the film. In the first three years this subsidy can be paid to laboratories situated outside Uttar Pradesh. However, after three years regional films will be able to avail this scheme only if the processing of their films is done by labs situated in U.P. This provision will hopefully stimulate the growth of such lab facilities within the State. Besides, far promotion of such Hindi films also, over 75% shooting of which has been completed in the State, a proportionate grant shall be given or the amount of grant will be adjusted with rates of interest of institutional finance for films." C D

5. The respondent (the writ petitioner) had decided to produce a Hindi film entitled 'Pani Re Pani Tera Rang Kaisa' in U.P. For this purpose the petitioner submitted his application to the Film Bandhu on the prescribed format, copy of which is Annexure-5 to the writ petition. He also submitted copy of the script with a Bank draft of Rs.2,500/- as processing charges. It is alleged that the script of the film was approved by the expert committee, whose recommendations were approved by Film Bandhu vide approval letter dated 27.5.2003, Annexure-6 to the writ petition. Thereafter, the respondent made various arrangements and shot the entire feature film in Lucknow. E F

6. The petitioner claimed the subsidy under the film policy and is aggrieved by the order dated 29.4.2004, Annexure 13 to the writ petition issued by the Directorate of Information, U.P. by which the subsidy to the petitioner has been restricted to 25% of the processing charges only, and not 25% of the entire cost of producing the film. The petitioner prayed for quashing of the order dated 29.4.2004 and for a mandamus directing the respondent to make the payment of Rs. 8, 94, 591/- being the remaining amount claimed by him as subsidy, i.e., over and above the amount already paid to him as 25% of the processing cost in the lab. G H

A 7. By the impugned judgment the writ petition was allowed and hence this appeal.

B 8. Learned counsel for the appellant submitted that under clause 23.3 of the film policy the subsidy payable was only 25% of the cost involved in the processing of the film in the laboratory (subject to a maximum of Rs.10 lacs). He submitted that the purpose of the subsidy was that film labs were situated outside U.P. and hence a subsidy was granted in relation to the film processing in the labs which were outside U.P. but this subsidy was restricted to only three years.

C 9. On the other hand, learned counsel for respondent submitted that other film producers had been granted 25% of the entire cost of production of the film.

D 10. We are of the opinion that if other film producers were granted subsidy of 25% of the cost of production of the film (subject to a maximum limit of Rs.10 lacs) then the writ petitioners should also be given the same benefits. However, if that was not done then the subsidy should be 25% of the cost of film processing in the lab (subject to a maximum of Rs.10 lacs) and not the entire cost of the film production.

E 11. It is well settled that a relevant factor for interpretation if there is some ambiguity in a circular is how the circular has been understood by the department itself which issued it. This is particularly so when there are two interpretations possible, as is in the present case.

F 12. In these circumstances, we set aside the impugned judgment and remand the matter to the High Court for a fresh consideration after calling for the relevant material in order to understand how clause 23.3 of the Film Policy was understood by the department itself and what subsidies have been given to other film producers.

G 13. For the reasons given above, we allow the appeal, set aside the impugned judgment and remand the matter to the High Court. No cost.

K.K.T.

Appeal allowed.