

Neutral Citation No. - 2025:AHC-LKO:12763-DB

A.F.R.

**High Court of Judicature at Allahabad  
Lucknow**

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**Reserved on 18.02.2025**

**Delivered on 04.03.2025**

**Court No. - 2**

**Case :-** WRIT TAX No. - 147 of 2023

**Petitioner :-** Ashok Gandhi

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. State Tax Civil  
Sectr. Lko. And Others

**Counsel for Petitioner :-** Rajeev Kumar Srivastava

**Counsel for Respondent :-** C.S.C.

**Hon'ble Rajan Roy,J.**

**Hon'ble Om Prakash Shukla,J.**

**(Per : Om Prakash Shukla, J.)**

- (1)** Heard Shri Rajeev Kumar Srivastava, learned Counsel for the petitioner and learned Standing Counsel for the State.
  
- (2)** This writ petition under Article 226 of the Constitution of India has been filed, assailing the orders dated 24.04.2023 and 26.05.2023 passed by the opposite party No. 3-District Magistrate/Licensing Authority, Saharanpur and opposite party no.1/State, respectively, whereby the petitioner has been directed to deposit 10% of the amount of grant-in-aid and interest (Rs.4,37,50,359/-) i.e. Rs.40,75,035.90 in the head of GST account within a period of one week and submit a copy of the challan so that the Commissioner, State Tax, Uttar Pradesh could be informed.

- (3)** Petitioner before this Court was running a cinema hall, namely, G.N.G. Multiplex, at Saharanpur, which was constructed by partnership firm as per terms and conditions of deed of partnership dated 05.03.2008 contained in Annexure no.3 to the petition. He was granted license by the licensing authority to run Audi 1 to 4 Cinema Hall in the aforesaid G.N.G. Multiplex.
- (4)** The State Government had issued a Government Order dated 03.01.2011, whereby in supersession of earlier Government Orders and also Incentive Scheme, 2005, the State Government had floated new Incentive Scheme for the year 2010 for the purpose opening multiplex cinema hall in the State. This Incentive Scheme of 2010 was effective w.e.f. 31.03.2015. As per the said Scheme of 2010, the benefit of this scheme shall be admissible to all such multiplexes constructed during this period, which have completed the construction of the multiplex after obtaining prior permission for construction from the licensing authority under the rules provided in the UP Cinema Rules, 1951 and have obtained license for cinema screening by 31.3.2015. However, those applicants who, being influenced by the scheme of Government Order dated 27.09.2005, have started construction work of multiplex after obtaining prior permission of District Magistrate under the provisions of UP Cinema Rules, 1951, but have not been able to obtain license for public exhibition of films in the cinema halls of the

multiplex till 31.3.2010, such multiplexes which obtain license for exhibition till 31.3.2011, will also be allowed the benefit of this scheme as per the provisions mentioned in Para-2 thereof, on compliance of other conditions mentioned in this Government Order.

- (5) The petitioner, a partnership firm, claiming itself to be a licensee of Audi 1 to 4 of GNG Multiplex situated at Saharanpur, submitted an application before the Licensing Authority/District Magistrate, Saharanpur as per the aforesaid Government Order dated 03.01.2011, which was accorded by the Licensing Authority i.e. District Magistrate, Saharanpur and the petitioner was sanctioned grant-in-aid amounting to Rs. 8,88,74,933.40, vide order dated 20.07.2015 for a period of 5 years i.e. upto 31.03.2020 on certain terms and conditions.
- (6) According to the petitioner, he moved an application on 29.02.2020 for renewal of the license for the financial year 2020-21 and also submitted renewal fees of license for Audi 1 to 4 i.e. Rs.2,40,000/- on 21.03.2020 before the Licensing Authority/District Magistrate, Saharanpur. However, owing to the pandemic Covid-19, the District Magistrate, Saharanpur directed all the Multiplex Cinema Hall to close down with effect from 16.03.2020 to 31.03.2020, which came to be extended till 02.04.2020. According to the petitioner, the direction for closure continued till 15.10.2020 and thereafter a

SOP issued by the State Government for opening of certain activities including the Cinema Hall and Multiplex. Further, the Commercial Tax Officer/Prabhari Adhikari (erstwhile Entertainment Tax), Saharanpur also issued a general order dated 07.10.2020 to all the licensee to complete all the formalities along with the compliance report upto 14.10.2020.

- (7) Apparently, the petitioner also filed an application dated 14.10.2020 for renewal of license and grant-in-aid. It is the case of the petitioner that although, the State Government issued SOP on 15.10.2020 for opening of the Multiplex with the sitting capacity of 50%, however, since the film industry had closed down its business all over the world during that Covid - 19 period, no new films came to be released and unfortunately the District Magistrate without providing any opportunity of hearing passed an order dated 05.02.2021 against the petitioner relating to violation of terms of condition as mentioned in Government Order dated 03.10.2011 and consequently directed the petitioner to deposit/refund Rs. 4,37,50,359.00 being the cumulative amount arrived after the grant-in-aid amount sanctioned of Rs. 2,89,64,466/- and interest of 18% amounting to Rs. 1,47,85,893/-. In the interregnum, the petitioner was also able to obtain the requisite compliance certificate under the UP Cinematograph Rules, 1951 from the Electrical Inspector on 25.03.2021, Medical Officer of Health on 21.03.2021 and Regional Fire Officer on 01.04.2021, leading to renewal of

license of Audi 1 to 4 of the petitioner with effect from 05.04.2021 and valid upto 31.03.2024.

- (8) The petitioner, admittedly, did not assail the aforesaid order dated 05.02.2021 passed by the District Magistrate, Saharanpur, however, he filed a representation dated 03.12.2021 against the order dated 05.02.2021. Thereafter, the Deputy Secretary, State of U.P from the concerned Commercial Tax Department, Uttar Pradesh had sought various reports from time to time.
- (9) The fulcrum of the submission of the petitioner is that although, the matter had been pending active consideration, however, suddenly the impugned order dated 24.04.2023 has been passed by the Joint Secretary, State of U.P, directing the Commissioner, State Tax, U.P to take necessary action regarding deposit of 10% amount as per the recovery order dated 05.02.2021 passed by the District Magistrate, Saharanpur against CNG Multiplex Saharanpur covered under the Incentive Scheme; re-examine the case; and provide his clear report to the Government, consequent of which, the District Magistrate has passed the order dated 26.05.2023, directing the petitioner to deposit 10% of the amount of grant-in-aid and interest (Rs.4,37,50,359/-) i.e. Rs.40,75,035.90 in the head of GST account in pursuance of order dated 05.02.2021 within a period of one week and submit a copy of the challan so that the Commissioner, State Tax, Uttar Pradesh could be informed. It

is these orders dated 24.04.2023 and 26.05.2023, which have been assailed in the present writ petition.

- (10) The contention of the learned Counsel for the petitioner is that earlier against the order dated 05.02.2021, the petitioner moved an application dated 03.12.2021 before the Licensing Authority/ District Magistrate, Saharanpur on various grounds, which is still pending before the State Government since December, 2021 and various report has also been called for in connection with the petitioner's representation, however, without taking any decision on the petitioner's representation, all of a sudden, the Joint Secretary, State of U.P., vide impugned order dated 24.04.2023, directed the Commissioner (State Tax), Government of U.P., to take action for depositing of 10% amount in pursuance of the recovery order dated 05.02.2021, consequent of which, the District Magistrate, Saharanpur, has issued the consequential order dated 26.05.2023. Submission is that the representation had been pending before the State Government since December, 2021 and the impugned order dated 26.05.2023 passed by the District Magistrate, Saharanpur pursuant to order dated 24.04.2023 passed by the State Government, demanding deposit of 10% amount, after three years, is arbitrary and without any legal basis. According to the learned Counsel, all the licenses had been applied for timely renewal and there was no occasion for abruptly passing the impugned orders as the representation had been pending

consideration with the competent Authority since more than 3 years.

- (11) On the other hand, learned Standing Counsel for State, although did not dispute about the facts and events of the present writ petition, however, has strongly objected the manner in which the recovery proceedings are being tried to be stalled by the petitioner. According to him, the petitioner is in clear violation of condition mention in para-7 of the agreement and failed to run the Multiplex in continuation to the grant-in-aid for five years. According to him, the petitioner closed down the Multiplex from 15.10.2020 to 15.04.2021 and caused great revenue loss to the department. The learned Counsel has submitted that the petitioner has been sending representation to various authorities including the Agriculture Minister, Chief Minister through IGRS, Indian Industries Association etc. merely to pressurize the department and eventually delay the recovery proceedings against them.
- (12) Having regard to the submissions of the learned Counsel for the parties and gone through the record available before us in the present writ petition, this Court find that although there is no dispute relating to the events during which the concession of the entertainment tax i.e. grant-in-aid was sanctioned and received by the petitioner, however, there is a serious dispute amongst the parties relating to the issue of breach of terms and conditions of the said concession.

(13) Admittedly, opposite party no.3/Licensing Authority, in exercise of the rights vested in the said Government order dated 03.01.2011, has cancelled the concession and demanded refund of the entire amount from the petitioner along with interest at the rate of 18 per cent vide order dated 05.02.2021, against which a representation dated 03.12.2021 filed by the petitioner is pending. Both parties are at ad-idem that the said representation is in active consideration, however, the petitioner disputes the manner in which the opposite party no.1 and 3 have issued the impugned order dated 24.04.2023 and consequential order dated 26.05.2023, respectively, demanding to deposit of 10% of the total amount sought as a refund of the grant-in-aid, as a condition precedent for re-consideration of the representation of the petitioner.

(14) Since the order for cancellation dated 05.02.2021 of the grant-in-aid sanctioned to the petitioner by the Licensing Authority/District Magistrate, Saharanpur, is not a subject matter of challenge, this Court refrains from commenting on the merits of the said order of cancellation. Consequently, the petitioner is merely aggrieved by the demand of 10% of the total refund amount as a condition for disposal of the representation only. This Court finds that the concept of demanding or depositing of a portion of the demanded money as a pre-condition for hearing is not uncommon in tax laws or

under the general laws for that matter as we have the Consumer Protection Act (*Please see Proviso to section 19 or section 51 of the Act*) or the RERA Act, 2016 (*please see section 43(5) of the Act*). However, in most of the cases as is prevalent under the Income Tax Laws, GST Laws, or the Customs Laws, these pre-condition for hearing is basically at the stage of an Appellate forum and not before the original adjudicating authority. Further, most significantly these conditions of depositing a portion of demanded money for hearing of the appeal is found to be under specific law, for example we have specific sections for pre-deposit under Section 254 of the Income Tax Act, Section 129E of the Customs Act, 1962 or we had section 35F of the Central Excise Act or section 107(6) or section 112(8) of the CGST Act, 2017. Thus, it can be safely deduced from the said analogy that demand of a portion of demanded money as a pre-condition for hearing is borne from the statute itself and in all the cases the said pre-condition is imposed at the appellate stage, i.e the time when the duty or demand comes to be adjudicated upon by the original administrative or quasi-judicial body and most importantly the demand is not in a fluid state.

- (15)** In the present case, this Court finds that the demand to deposit 10% of the total grant-in-aid concession provided to the petitioner, for hearing of the representation is neither founded in the statute nor the same is at an appellate stage. Learned Standing Counsel is unable to point out any provision under

law under which the State Government/opposite party No.1 would had demanded the pre-deposit for disposal of the representation of the petitioner. Further, this Court is unable to appreciate the conduct of the opposite parties in demanding the said pre-deposit at the belated stage of April, 2023, especially when the representation had been pending since December, 2020.

- (16) Further, this Court finds that the impugned order dated 24.04.2023 and consequential order dated 26.05.2023 demanding deposit of 10% of the total amount of grant-in-aid has been passed by the opposite party nos.1 and 3, respectively, without any reasoning or affording any opportunity of hearing to the petitioner. This Court need not burden this Judgment, with various case laws on the subject that reasoning is the soul and hallmark of any judicial or administrative orders and a part of fair procedure. Suffice to say that the Apex Court in the case of *Kranti Associates (P) Ltd. v. Masood Ahmed Khan* : (2010) 9 SCC 496, wherein the Apex Court, while dealing with the requirement of passing reasoned order by an authority whether administrative, quasi-judicial or judicial, has after applying the earlier declarations of law in this regard, summarized as under :-

*“...Summarizing the above discussion, this Court holds:*

*“(a) In India the judicial trend has always been to record reasons, even in*

*administrative decisions, if such decisions affect anyone prejudicially.*

*(b) A quasi-judicial authority must record reasons in support of its conclusions.*

*(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*

*(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*

*(e) Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.*

*(f) Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.*

*(g) Reasons facilitate the process of judicial review by superior Courts.*

*(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.*

*(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.*

*(j) Insistence on reason is a requirement for both judicial accountability and transparency.*

*(k) If a Judge or a quasi-judicial authority is not candid enough about his/ her decision*

*making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.*

*(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision-making process.*

*(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harvard Law Review 731-737).*

*(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya v. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, adequate and intelligent reasons must be given for judicial decisions.*

*(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of Due Process."*

- (17) Further, this Court finds that opposite parties no. 1 and 3 before passing the impugned orders demanding a deposit of 10% of the grant-in-aid have not afforded a reasonable opportunity of hearing to the petitioner. There is no quarrel on the aspect that a demand of payment of 10% of the grant-in-aid does give rise to

civil consequences and would cause serious prejudice to the rights of the petitioner. In any case, an opportunity of being heard is one of the most important component of “principle of Natural Justice”. The Apex Court in **Dharampal Satyapal Ltd. v. CCE : (2015) 8 SCC 519 : 2015 SCC OnLine SC 489** at page 537 has held as under:

*“35. From the aforesaid discussion, it becomes clear that the opportunity to provide hearing before making any decision was considered to be a basic requirement in the court proceeding. Later on, this principle was applied to other quasi-judicial authorities and other tribunals and ultimately it is now clearly laid down that even in the administrative actions, where the decision of the authority may result in civil consequences, a hearing before taking a decision is necessary.”*

- (18) Be that as it may, it is a trite law that no order prejudicing the interest of a person resulting in civil consequences can be passed without affording an opportunity of hearing. It is not the case of opposite parties that opportunity of hearing was afforded to the petitioner or that the present case is such wherein notice of hearing is to be dispensed with. This Court finds that no opportunity of hearing was provided to the petitioner before the passing of the impugned order dated 24.04.2023 and consequential order dated 26.05.2023, whereby the petitioner had been directed to deposit Rs. 40,75,035.90 as

and towards pre-deposit for hearing of their representation dated 03.12.2021.

- (19) As a sequel to above, the impugned order dated 24.04.2023 passed by the opposite party No.1 and consequential order dated 26.05.2023 passed by the opposite party no.3-District Magistrate, Saharanpur, cannot be sustained in the eyes of law and as such the same are hereby quashed. Opposite party no.1 shall consider and decide the representation of the petitioner dated 03.12.2021 filed against the order dated 05.02.2021 by a speaking and reasoned order, without insisting for any pre-deposit from the petitioner, expeditiously, say, within a period of three months from the date of production of certified copy of this order.
- (20) It is made clear that this Court has not expressed any opinion on the merits of the present case in any manner and it is open for the parties to agitate their rights and liabilities, if any, before the competent authority, as may be permissible under law.
- (21) The writ petition stands **allowed**.

(Om Prakash Shukla, J.) (Rajan Roy, J.)

Order Date : 4<sup>th</sup> March, 2025  
Ajit/-