(2003) 10 PAT CK 0015

In the Patna High Court

Case No : C.W.J.C. No. 3953 of 2003

Amardeep Pictures APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 17-10-2003

Acts Referred:

Bihar Cinemas (Regulation) Act, 1954 — Section 9, 9(2)
Bihar Cinemas (Regulation) Rules, 1974 — Rule 27, 27(1)
Constitution of India, 1950 — Article 19(1)

Citation : (2004) 1 PLJR 220

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Lalit Kishore and R.K. Priyadarshi, in C.W.J.C. No. 3953 and Mukund Jee, in C.W.J.C. No. 5982, for the Appellant; Mahesh Prasad, for the Respondent

Judgement

Aftab Alam, J.—The Petitioners in these two writ Petitions stand to lose the licences for their respective cienmas, not because of any wilful default on their part but apparently due to mis-interpretation of a judgment of this Court by the Bihar Motion Pictures Association, of which the Petitioners in the two cases are members. It seems that the Association led the two Petitioners to believe that it was open to them to price their cinema tickets at rates lower than those fixed by the Government without any prior approval of the licensing authority (the Dist. Magistrate). They did so. But at the time of renewal of the licences the Dist. Magistrate directed them to deposit the differential amount of entertainment tax leviable on the basis of the ticket rates fixed under the Government notification because the ticket rates were lowered by the Petitioners with out prior approval. On their failure to deposit the differential amount of tax he rejected the Petitioners'' application for renewal of their respective licences, and directed for the closure of the two cinemas. The Petitioners, aggrieved by the orders of the Disit. Magistrate, have come to this Court seeking suitable reliefs.

2. By a circular letter, dated July 31, 2001 issued by the Joint Secretary in the Department of Urban Development Government of Bihar, addressed to all the

Dist. Magistrates, the State Government, under Rule 27 of the Bihar Cinemas (Regulation) Rules, 1974 revised the rates of cinema tickets for cinemas in towns and urban centres falling under different categories. (The revision of rates of cinema tickets was made after seven years, the previous rates having been fixed by circular letter, dated July 29, 1994). On issuance of the circular letter, dated July 31, 2001 and on the basis of certain directions given by the High Court in a case pending before it at that time, the Dist. Magistrate, Begusarai (where two cinemas, presently before the court, are situate) convened a meeting of all cinema owners of the district on 28.8.2001. In that meeting the rates of cinema tickets for the district were fixed as per the Government decision and the Cinema Magistrate, Begusarai accordingly issued, memo No. 1868, dated 31.8.2001 notifying the rates. The Commercial Taxes Department was also informed tnat entertainment tax would be paid by the cinema-owners on the basis of the new rates fixed under the memo, dated 31.8.2001

3. It appears that the two Petitioners found that the revised rates were a bit too steep and unpropfitable for their respective cinema. They, therefore, decided to reduce the rates of their tickets. M/s. Amardeep Pictures (Petitioner in CWJC No. 3953 of 2003) reduced the rates of tickets for D.C. class from Rs. 12/- to Rs. 10/- and for R.S. class from Rs. 8/- to Rs. 7/- Shri Krishna Chalantika Picture Palace (Petitioner in CWJC No. 5982 of 2003) simiiariy, reduced the rates of tickets for D.C. Class to Rs. 9/- and for R.S. Class Rs. 7/-

4. The Petitioners seemed to believe that for fixing the rates of tickets lower than those fixed by the licensing authority no prior permission or approval was required and they could do so on their own. The Petitioners, therefore, did not move the licensing authority for his permission or approval but simply gave information in this regard, both to the licensing authority and the taxing authorities. The Petitioner in CWJC No. 3953 of 2003 sent the following letter which was received in the office of the Dist. Magistrate on 19.7.2002:

To,

The District Magistrate, Begusarai.

Sub: Reduction of present cinema tickets rate.

Sir,

Most humbly we request you that since we have increased our cinema tickets rates last time as fixed by the cinema owners, the number of cinema visitors have decreased highly.

We, therefore, request you that we are reducing our ticket rates as per Hon''ble High Court''s orders.

Present Ticket Rate Proposed Ticket Rate

D.C. Rs. 12/- only D.C. Rs. 10/- only.

R.S. Rs. 8/- only R.S. Rs. 7/- only.

5. Having thus reduced the rates of tickets the Petitioners duly deposited entertainment tax, following the provisions of compounding, on the basis of the lower rates of tickets. It is significant to note that, there is no allegation against the Petitioners that having professed to fix lower rates of tickets, they actually charged higher rates from cinema-goers or that they did not pay taxes, correctly on the basis of the reduced rates of tickets for their respective cinemas.

6. At that time of renewal of licences, the Petitioners were obliged to take a noobjection certificate from the Commercial Taxes'' authorities. In the certificate, dated 20.12.2002 issued to M/s. Amardeep Pictures, the Assistant Commissioner, Commercial Taxes indicated that the Petitioner had been depositing tax at lower rates of tickets and he had no objectign to the renewal of the licences provided the licensing authority granted his approval to the reduced rates of tickets.

7. The Disit. Magistrate, therefore, while considering the application for renewal of licences directed the Petitioners (vide memo No. 722, dated 11.3.2003 in the case of M/s. Amardeep Pictures and by memo No. 737, dated 3.3.2003 in the case of Shri Krishna Chalantika Picture Palace) to deposit the differential amounts of entertainment tax leviable on the basis of the rates of tickets fixed under the memo, dated 31.8.2001 and to produce a certificate from the Commercial Taxes Department showing the deposit by 20.3.2003. This clearly meant that the Petitioners were to make up for the loss of revenue resulting from the reduction in the rates of tickets from their own coffers because at that stage there was no way to pass on the liability to the cinema-goers.

8. Both the Petitioners were unable to deposit the differential tax amounts. Consequently, the Dist. Magistrate by identical orders, dated 24.3.2003 passed in the two ases rejected the Petitioners'' application or renewal of their licences and directed for closure of the two cinema halls. The Dist. Magistrate held and found that the letters submitted by the Petitioners were merely informatory and were not Petitioners seeking approval for lowering down the rates of their tickets. He also held that action of the Petitioners in reducing the rates of tickets without his prior approval was'' violative of the relevant provisions of the rules and was in breach of this Court''s direction and further that they had failed to Rectify the wrong done by them by deposting the differential amounts of tax and hence, they were not entitled to renewal of their respective licences.

9. Haying regard to the recent pro to incement of a bench of this Court the stand of the Dish Magistrate, from a technical point of view, appears to be quite correct arid unexceptionable. But the matter would appear somewhat different if viewed in a broader perspective.

10. The preamble of the Bihar Cinnmas (Regulation) Act, 1954 states that the Act was (intended) to make provision for regulating exhibition by means of cinematographs in the State of Bihar. Section 9 of the Act empowers the State Government to make rules and Clause (d) of Sub-Section (2) of the section is as

follows:

(d) Regulating or prohibiting the sale of any ticket or pass for admission, by whatever name called, to a place licensed under this Act.

11. In exercise of the powers u/s 9 of the Act, the State Government framed rules called the Bihar Cinemas (Regulation) Rules, 1974, Rule 27 of which reads as follows:

Procedure for sale of any ticket or pass for admission.- (1) Admission to the film exhibition in the cinema house shall be on a valid ticket or pass issued by the licensee or his authorised agent within the licensed premises:

Provided that the licensing authority mav. with the approval of the State Government, regulate the rate of admission fee to various classes in the cinema house and the same shall, along with the taxes thereon, be printed on the face of the ticket.

(2) The number of tickets issued and the number of complimentary passes. taken together, shall not exceed the number of seats available in each class in the cinema house in terms of the licence.

(emphasis added).

12. From the proviso to Rule 27(1) it is clear that the matter of fixing the rates of cinema tickets is not left entirely in the hands of the cinema-owner but it is subject to the regulatory control by the licensing authority, with the approval of the State Government. It must, however, be borne in mind that the regulatory control over fixing the rates of cinema tickets is primarily in order to protect the interest of the cinema-goer and to save him from exploitation by unscruplous cinema-owners. It is not even remotely suggested by any provision of the Act or the Rules that the regulatory control over fixing the rates of cinema tickets is intended to secure the State''s revenue by way of entertainment, tax. In that case, of course, the control would infringe upon the fundamental right guaranteed to the citizen and would, therefore, be ultra vires Article 19(1)(g) of the Constitution. It, therefore, follows that any action of the licensing authority and/or the State Government, in purported exercise of powers under Rule 27 aimed at securing or augmenting the State''s revenue would be bad and would amount to an illegal interference in the citizen''s rights. Once this aspect of the matter be comes clear, there would be no difficulty in appreciating that pricing the tickets at rates higher than those fixed by the Government would be a breach of Rule 27 but the converse of it, that is, pricing the tickets at rates lower than those fixed by the Government would not cause any breach of the rule.

13, This legal position was evidently clear to all concerned when the Government had fixed the rates of cinema, tickets previous to the last notification. In the circular letter, dated July 29, 1994 while fixing the rates of cinema tickets it was stated at the end of the letter that the Government would have no objection if the cinema-owner fixed a lower rates for his tickets, but, in no case the rates of tickets would be higher than those fixed by the Government.

14. The rates fixed by the Government in 1994 remained subsisting for a long time and the failure of the Government to revise the rates caused such resentment among the cinema-owners. Some writ petitions were, therefore, filed in the High Court seeking a direction to the State Government to suitably revise the rates of cinema tickets. Those writ petitions were placed before a bench presided over by the Hon''ble the Chief Justice. During the pendency of those cases, the Government issued the circular letter, dated July 31, 2001 by which the rates of cinema tickets were revised. But in the letter of July 31, 2001, there was no clause similar to the one in the previous letter, recognising right of the cinema-owners to keep the rates of their tickets lower than the rates fixed by the Government/licensing authority.

15. The omission to my mind was not accidental or gratutious. The omission was deliberate and it only reflects some basic changes that have taken place in the State between 1994 and 2001. On November 15, 2001, the State was truncated and as the result of the division what reftiains of the State of Bihar has lost much of its resources and is starved of revenue. This seems to have totally distorted and warped the orientation of the Government and its officers are forced to seek sources of revenue where non-exists in the eyes of law. The case in hand is only illustrative and this Court is quite convinced that a cinema-owner was not allowed even the right to price his tickets at rates lower than those fixed by the Government for the simple reason that that would cause a loss of revenue for the Government.

16. As the letter, dated 31.7.2001 was issued during the pendency of the cases before this Court, the Petitioners in those cases brought the omission to the notice of the court and the division bench by judgment and order, dated 13.12.2001 in Bihar Motion Pictures Association Vs. The State of Bihar and Others incorporated in the letter of July 31, 2001 with certain qualifications, the missing clause from the 1994 letter. In paras 19 and 20 of the judgment, it was observed and directed as follows:

19. The rates which have recently been settled and announced by the Government and indicated to the Court on an affidavit giving a tabular chart of the rate of the cinema ticket which may be charged from different classes on the basis of categorisation of different towns of Bihar, it has been argued, are too rigid. In actually it has been submitted before the court that certain cinema owners cannot run the business of the cinema on the rates indicated as the price of the ticket is too excessive. Completely negating Rule 27 which provides discretion to the licensing authority to regular the rate, the cinema owners particularly those out-side Patna, are being told that they will have to sell a cinema ticket as provided in the rules indicated. On a point of clarification, it is being pointed out that in 1994 the rates prescribed by the notification (dated 29 July, 1994) short circuited the licensing authority, get the explanation at the end of the notification permitted a lessor charge than the rate prescribed. Today, on

the rates indicated the licensing authority are telling the cinema owners that they would not permit a charge less than indicated in the notified rates. The Court is being told some cinema owners can not run the cinema on the rates as prescribed. The flexibility has been taken out from the rates notified by the State Government.

20. The court is afraid that the State Government will have to conform to the flexibility provided by Rule 27 so that if, in any town a cinema owner cannot run the business on the basis of the rates indipated recently, then the cinema owners necessarily be permitted to seek a regulation from the licensing authority for a lessor rate. Thus, it would be in thie fitness of things that the explanation which is added to the notification dated 29July 1994 may be employed to the rate notified, and indicated in the affidavit dated 20.8.2001.

"To sum up"

(a) The rates which have been indicated by the State Government not with standing that there may not have been an exercise by the licensing authority may be permitted to discharge by such cinema owners who have the capacity to charge the maximum rates. Such of those cinema owners who cannot carry on their business if the rates indicated are charged may be permittee by the local licensing authority to charge a lessor price for a cinema ticket, under intimation to the State Government.

(b) Should a cinema owner may need a regulation of a rate which is higher than the rate indicated, then the rule permits a regulation to this effect and this would be an exercise between the cinema owner and the licensing authority of local jurisdiction. If a higher rate is permitted by the licensing authority then the later would need to record reason why an increased rate has been settled. In that case, consistent with the spirit of the rule, the licensing authority will seek approval of the State Government and this approval should be forth coming within thirty days of the licensing authority settling the rates.

(emphasis added)

17. It is, thus, clear that the division bench decision made it possible for the cinema-owner to fix lower rates, of cinema tickets, though subject to the permission by the local licensing authority.

18. It seems that this qualification was over-looked by the Motion Pictures Association and it was generally believed that the clause of the 1994 letter would apply fully and in an unqualified manner to the revised rates of the year, 2001. And it was under this erroneous assumption that the two Petitioners reduced the ticket rates of their respective cinemas without prior approval of the Dist. Magistrate and to that extent the Dist. Magistrate is clearly right that their action was contrary to the direction given by this Court.

19. Mr. Lalit Kishore, Advocate appearing for the Petitioner in CWJC No. 3953 of 2003 strongly argued that the subjection of the cinema-owner''s right to charge

lower rates was wholly uncalled for and there was no sanction for it in any provision of the Act or the Rules. Learned Counsel submitted that the regulatory control fixing the rates of cinema tickets, unless aimed at protecting the cinema-goer would interfere with the cinema-owner''s fundamental right to carry on business in the manner be considered best. Learned Counsel pointed out that any restriction on charging lower rates could only be aimed at securing the State''s revenue but that was a consideration wholly foreign to the provisions of the Act and the Rules and, therefore, illegal, Therefore the right of fix lower rates for cinema tickets could not be made subject to the approval or permission by the licensing authority Mr. Lalit Kishore argued that this aspect of the matter was not pointed out of the Divission bench and to "that extent be order Bihar Motion Pictures Association citation was not correct.

20. In my vie the submission of Mr. Lalit Kishore cannot be considered by me sitting singly, Mr. Kishore is contending what should be the legal position in view of the provisions of the Act and the Rules but I see what is the legal position as declared by the Division bench in the case of Bihar Motion Pictures Association (supra) and that clearly was lays down that a cinema-owner can charge lower rates only with the permission of the local licensing authority and it is for this reason that the Dist. Magistrate was right in observing that the Petitioners had acted contrary to the direction of this Court.

21. But there are certain undeniable features of the case that cannot be over looked. these can be summarised as follows:

(i) it is undeniable that the Petitioners did not act with any ulterior motive but they acted under an erroneous as sumption and as a result of mis-understanding the correct legal position as declared in the Bihar Motion Pictures Association''s case.

(ii) Though they did not seek formal aproval or permission of the licensing, authority they gave due information both to the licensing authority and the taxing athorities in regard to the reduction in as the rates of tickets.

(iii) They did not commit any evalution of taxes but duly paid up-to-date taxes on lower rates of tickets.

(iv) There is no allegation of a breach of any other terms and conditions of the licences earlier by the Petitioners.

(v) The closure of the two cinemas would cause no benefit to anyone but would lead to a permanent loss of revenue to the State.

22. In the aforesaid facts and circumstances this Court is of the view that the ends of justice would meet by treating the letter dated 19.7.2001. (Annexure 3 in CWJC No. 3953 of 2003) and the application in Form ''C'' dated 23.7.2002 (Annexure 2 in CWJC No. 5982 of 2003) (held by the Dist. Magistrate as merely informatory) as request for fixing lower rates of tickets. The Dist. Magistrate is accordingly directed to consider the Petitioners'' request for lower ticket rates

retrospectively, in accqrdange with law, and in the light of the observations made in this judgment, It wil be open to the Dist. Magistrate to allow the Petitionrers request subject to such conditions including a suitable fine for not moving him in time, as he may deem fit and proper is expected and hoped that the Dist. Magistrate shall pass a final order in regard to permission for fixing lower rates of tickets and in regard to the renewal of the Petitioners licences within one month from the date of receipt/production of a copy of this order in his office.

23. The Petitioner in CWJC No. 3953 of 2003 shall be allowed to run cinema on the basis of the provisional renewal of licence in terms of the interim order passed in the case.

24. The two writ petitions stand disposed of with the aforesaid observations and directions.

