
(2001) 07 AHC CK 0058
In the Allahabad High Court
Case No : C.M.W.P. No. 27885 of 2001

Arvind Kumar Agrawal

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 30-07-2001

Acts Referred:

Constitution of India, 1950 — Article 19(1)

Citation : (2001) 4 AWC 2496

Hon'ble Judges : V.M. Sahai, J;Sudhir Narain, J

Bench : Division Bench

Advocate : Shashi Nandan, for the Appellant;

Final Decision : Dismissed

Judgement

Sudhir Narain, J.—The petitioner has challenged Clauses 7 and 8 of the Government order dated 12.6.2001, whereby certain relaxation in regard to the constructions of cinema halls has been given to the persons raising constructions on complying with certain conditions.

2. The petitioner is running the business of Basant cinema since 1969 and is also running Ganga cinema since the year 1987. Both the aforesaid cinema halls are situated at Thana Bhawan, district Muzaffarnagar.

3. Respondent No. 3 applied to the District Magistrate/Licensing Authority for construction of cinema halls. He has granted permission to him to construct cinema halls. The grievance of the petitioner is that the site of the cinema hall which is to be constructed by respondent No. 3 is hardly at a distance of 3 kms. from Basant Cinema and 3.5 kms. from Ganga Cinema and it will affect the business of the petitioner for two reasons, firstly it is near to the cinema hall of the petitioner and secondly the cinema halls, which are to be constructed, will get tax exemption.

4. The State Government has issued various Government orders framing the policy when the Licensing Authority is to grant permission for raising construction

of cinema halls. The State Government issued a Government order dated 11.8.2000, for laying down its policy to encourage the construction of new cinema halls throughout the State of U.P. Clause (3) of the aforesaid Government order provides that in case the cinema hall is constructed in an area having population of one lac. then proprietor shall be entitled to the benefit of exemption of entertainment tax to the extent of 100% while in respect of cinema halls constructed at a place having population in excess of one lac. then the aforesaid exemption would be available for a period of three years and thereafter for a period of another two years at the rate of 50%. The State Government issued another Government order dated 9.1.2001, amending the clauses 7 and 8 of the Government order dated 11.8.2000. It provided that in case of Nagar Panchayat, the cinema hall should not be situated within 5 kms. from the existing cinema hall while in case of Nagar Nigam and Nagar Palika Parishad, the aforesaid restriction of distance was fixed at 5 kms. from an existing cinema hall.

5. The State Government issued another Government order dated 12.6.2001, whereby Clauses 7 and 8 of the previous Government orders were further modified to the extent that power was given to the Licensing Authority to give relaxation in regard to the distance to be maintained between the existing cinema halls and the halls which are to be constructed with a view to encourage the construction of new cinema halls.

6. The grievance of the petitioner is in regard to the power conferred on the Licensing Authority to give relaxation in regard to the distance to be maintained between the existing cinema halls and the cinema halls, which are to be constructed.

7. The petitioner cannot claim that the other cinema halls should not be constructed so as to give him monopoly in running the cinema hall within a certain area. Every citizen has a right to carry on business at any place.

8. In *Daulat Ram Gupta v. State of U.P. and others*, 1995 (2) EFR 169, where the Government issued an order that the Collector shall not appoint any diesel dealer within 5 kms. radius of a regular diesel retail out let of the company, was held violative of Article 19(1)(g) of the Constitution. It was observed that every citizen has a fundamental right to carry on any occupation, trade or business guaranteed to him by Article 19(1)(g) of the Constitution. Under clause (6) of the said article the State can, by law, impose reasonable restrictions on the exercise of such a right. Restriction can be imposed by "law" which means legislative enactment and the subordinate legislation. But a restriction cannot be Imposed by executive orders unsupported by the law.

9. The State Government by issuing Government order dated 12.6.2001 has given relaxation in regard of construction of cinema halls within the radius of 5 kms. The Government has framed policy keeping in view the interest of the public of the area and other factors. There is no illegality in the said Government order.

10. In view of the above, the writ petition is dismissed.