

(2001) 12 PAT CK 0019
In the Patna High Court
Case No : C.W.J.C. No. 1293 of 1999

Bihar Motion Pictures Association

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-12-2001

Acts Referred:

Citation : (2001) 12 PAT CK 0019

Final Decision : Allowed

Judgement

Ravi S. Dhavan, C.J.—This petition (CWJC No. 1293 of 1999 along with analogous cases) has been brought by the Bihar Motion Pictures Association in a representative capacity on behalf of the cinema industry in Bihar. Basically two reliefs are sought in the present petitions. These are entitlement to charge cinema maintenance charge and enhancement of the price of the cinema ticket.

2. The contention on behalf of the Petitioner is that there are no issues between the cinema industry and the State and that in principle it is acknowledged that the cinema ticket rate needs to be revised. Consequently, it is contended that the State Government has not shown any averseness to the proposition that the cinema maintenance charge should be increased but the Government has not given a serious thought to aspect that this increased charge should not be subject to entertainment tax under the Bihar Entertainment Tax Act, 1948.

3. Then there is the matter of the revision of the rates or the price of the cinema ticket. It is contended that Respondent No. 3, the Commissioner-cum-Secretary, Department of Urban Development, Government of Bihar has accepted that the rate of the cinema ticket needs to be revised every three years in view of increased cost of exhibition of motion pictures and general inflation and this matter has not been made an issue in the counter-affidavit. Then, the Petitioner contends that the State Government itself had the salary of cinema workers increased by 23% on the ground of inflation and the salary has been linked to the consumer price index. A notification dated 25th May 1998 provides for this. This aspect also has not been made an issue by the State of Bihar. It is then

asserted that in the last 15 years the cinema ticket rates have been revised only after the High Court intervened on the writ petitions filed by the constituents of the Bihar Motion Pictures Association. Reference is made to the increase of rates, which were occasioned in 1986, 1993 and 1994, On this is contended that the rate of the cinema ticket in Bihar is the lowest in the nation. It is pointed out that whereas the maximum rate of a cinema ticket at the time of filing of the petition in Dehradun, Uttar Pradesh, was Rs. 40/-, at Patna the highest cinema ticket was priced at Rs. 10.90. On this it is contended that other States have permitted the cinema maintenance charge to the cinema owners as also an airconditioning charge where this facility has been provided, but such a charge has not been permitted to the cinema industry in Bihar. This aspect has also not been denied. The fact that no issue has been taken by the State Government is witnessed by the fact that while this petition was pending, the matter was referred to a Committee for examination of these matters of increasing the rate of the cinema ticket. It is thus, that on 4th April 1999, the Hon"ble Chief Minister considered the proposal of the Bihar Motion Pictures Association and desired that a meeting be held between the Government and the representatives of the cinema exhibitors. The Petitioner submits that with the principle having been accepted that the grievance of the Bihar Motion Pictures Association is to be examined, while the matter may have been considered within the Government, the representatives of the Bihar Motion Pictures Association were not called to the meeting.

4. The point the Petitioner is making is that ever since 1986 the change of the price of the cinema tickets if it did take place, it was not a modality within the meaning of the Rules which permits the regulation of the rates. This is Rule 27 of the Bihar Cinema (Regularisation) Rules, 1974. This Rule is reproduced below:

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

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

(2) The number of ticket 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.

5. The Petitioner contends that any claim for increase in the price of ticket which was to be considered upon the direction of the High Court, the exercise could only be undertaken in accordance and subject to the regulation which provides for it. And this can only be under-taken by the local authority or local jurisdiction known as the licensing authority. Decentralisation is what the law permits and the cinema owners may have the rates or the price of a cinema ticket settled

with the licensing authority and this is a continuous process which takes into account the rising cost and inflation. The Petitioner points out to the change which was made 15 years ago by a Government order dated 24 September 1986 (Annexure 2 to the writ petition). But the Petitioner also points out that whereas the State Government was conscious of Rule 27 mentioned in the Government order itself, simultaneously the order recited that the increase in rates was considered upon direction of the High Court. Thereafter, the Petitioner contends that a demand for increase in price of a cinema ticket was considered at a meeting called by the Hon''ble Minister, Urban Development Department, on 12 April 1993. The Petitioner refers to the minutes recorded; Annexure 1 to the petition. The increased rates were announced by a Government order dated 29 July 1994 (Annexure 3 to the writ petition). The Petitioner submits that the Government order which permits the increase in rates refers to Rule 27 which permits regulation of the price of a cinema ticket locally by an authority of local jurisdiction. But, the Petitioner contends, the Government order prescribes rates throughout Bihar category wise, not cinema wise locally.

6. The Petitioner points to the principle referred to in Rule 27. It is contended that the licensing authority was never given the liberty to regulate the rate of admission of various classes locally and this power was arrogated by the Minister. The legal submission is that the power is of the licensing authority and there is no doubt on this aspect. The Petitioner contends that the Minister arrogating to himself the power, which otherwise has been delegated to a licensing authority, is an action which is illegal. The Petitioner contends that this action is arbitrary because the Minister has prevented the licensing authority as an authority of local jurisdiction to regulate the rates with cinema owner in the district concerned. The contention of the Petitioner is that this extra statutory practice to ignore the licensing authority and preventing him from interacting with the cinema owners within a district, has virtually become a habit in Bihar and nothing moves unless the cinema owners have an erroneous report with the Minister. Following the Rule is an exception, ignoring it is the rule.

7. The Petitioner contends that there must be an element of rationality and objectivity to work the rule and not avoid it. Appropriately, in accordance with the rule the cinema owner within a district should have access to approach the licensing authority and seek regulation of the price of a ticket if the need so arises. The contention is that the exercise undertaken by the Minister cannot be a one stroke measure for all times to come by clubbing all the cinema houses of Bihar into one composite order as the business of a cinema house is localised to the district where it carries on its venture.

8. In this regard the Petitioner cited a number of cases where the arrogation of power by a Minister by ignoring and shedding the licensing authority has been held to be an ultra vires action and illegal both. The Petitioner relied on a decision in re. Deepak Theatre, Dhuri Vs. State of Punjab and others, The Petitioner contended that the Supreme Court held that while providing for

regulation for the rate of admission and classification of seats in a cinema is in the interest of the general public and does not violate the fundamental rights, simultaneously, the guidance is clear that the power is of the regulatory authority mentioned in the enactment. The enactment referred to in the case is the Punjab Cinema (Regulation) Act, 1952.

9. On the same theme the Petitioner cited the case of State of Punjab and Another Vs. Hari Krishan Sharma, The Petitioner referred to paragraphs 12 and 13 of the judgment of Supreme Court to highlight the point that if a power has been conferred on a licensing authority for the purpose of granting or regulating a licence, the course adopted by State of Punjab that the applications of all licensees will be forwarded to the State Government is virtually converting the State Government from an appellate authority to the original licensing authority. In the circumstances, the Petitioner contended that the Supreme Court held that(sic) is true that Section 5(2) provides that the licensing authority may grant licences subject to the provisions of Section 5(1) and subject to the control of the Government, and it may be conceded that there may control of the Government, but this is subject to the licensing authority being permitted to function while exercising its power under the Act. However wide this control may be, it cannot justify the State Government to completely oust the licensing authority and itself usurp his functions. In continuation of this submission another case referred to. This was the matter of the State of Gujarat Vs. Krishna Cinema and Others, In this case the Supreme Court held that the direction of the State of Gujrat to the licensing authority to dismiss the applications was an act in violation of the rules. The rules in present case were under the Bombay Cinema (Regulation) Act, 1953. The Supreme Court held, in effect, that the Government was admitting to control the licensing authority.

10. The species of cases on the issue that should a statute may have conferred power to act on a particular authority then there must be not an abrasion of that power being arrogated by another functionary of the Government; the law is settled. This matter was considered by the Supreme Court in the sugarcane area reservation matter in the case of The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Others, In the matter relating to assignment and reservation of sugar-cane areas, the power had been conferred upon the Cane Commissioner. When this power had been pulled up and usurped by the Chief Minister of Bihar in no uncertain terms the Supreme Court certified that this was an illegality.

11. Thus, if the rates of cinema ticket are regulated under Rule 27, the power and the obligation to regulate has been conferred on the licensing authority, and not only this, on the licensing authority of local jurisdiction. Section 4 of Bihar Cinemas (Regulation) Act, 1954 says-"The authority having power to grant licences under this Act (hereinafter referred to as the licensing authority) shall be the District Magistrate". The power was decentralised district-wise on the District Magistrate of local jurisdiction to settle or regulate the rates but seek approval

upon the rates settled from the Government.

12. A shabby job was done to save or repair the situation. While these matters were pending and subjudice an adjournment was sought on behalf of the Government that the rates for cinema tickets are in the process of being revised by the Government. The adjournment as an indulgence was granted by the Court. Adjournments on behalf of the Government were taken in the matter on several dates; on 6 July 2001, 10 July 2001, 17 July 2001, 2 August 2001, 7 August 2001, 19 September 2001, 24 September 2001, 11 October 2001, and 8 November 2001. The adjournments were taken and permitted on the faith that if the rates were to be revised then there would be announcements, as a notice, that the cinema hall owners will receive a dialogue on the rates before being settled and subsequently announced.

13. But, when this matter was midstream under hearing, on July 6, 2001 an affidavit was being filed on behalf of the State affirmed by the Secretary, Urban Development Department that the revision of rates for the cinema tickets was under contemplation. The matter was placed before the Cabinet Committee on 10 April 2001 and, thereafter, before the Chief Minister on 2 July 2001. In the same affidavit it was stated that the matter is under consideration of the Finance Department and, thereafter, it will be sent for obtaining approval of the Cabinet. The adjournments were granted on the faith that the revised rates will be placed for approval of the State Government. On 20 August 2001 a supplementary affidavit was placed before the Court affirmed by a Deputy Secretary, Urban Development Department, appending a copy of a notification dated 31 July 2001 signed on behalf of the Joint Secretary. The State Government was now resorting to change the very rule under which the modalities of the rate of a cinema ticket is revised. A fundamental change was being brought. By this time the Petitioner had already argued that for the last two decades they have never had an occasion when the licensing authority of a particular district has been permitted to regulate the rate of the cinema ticket. The trade and industry running the cinema houses has had to approach the Government by sufferance. Every time the matter was taken to the Minister straightaway. Upon the decisions of the Supreme Court which the Petitioner had cited at the bar, the contention is that the law must be left as simple as it lies permitting the licensing authority concerned to regulate the rate in a given situation when a cinema owner may feel the necessity for a change. The new rule which was amended was bringing in a new situation. This was a duality of powers. The new rule suggests that the licensing authority may regulate the rate and the State Government also will have the power to regulate the same rates. Seeds of arbitrariness were being implanted with dual control; the licensing authority over shadowed by the Minister. But, the Supreme Court has time and again given guidance that the power of a licensing authority or a Cane Commissioner must not be overtaken by a Minister or a Chief Minister. And this amendment to Rule 27 was undertaken as an exercise when the issues are Sub-judice before the High Court.

14. When the matter is Sub-judice, a state of affairs must not be disturbed particularly so by giving faith to the Court that adjournments were sought to announce revised rates but under the cover of adjournments the rule was being changed justifying the shift of power, from a licensing authority to a Minister.

15. Closer home on the same subject in the matter relating to the running of a cinema the Court had an occasion to examine a situation when the power of an appellate authority, considering an action of a licensing authority to either grant a licence to run a cinema or cancel it, was usurped by a Minister illegally. This is the case of a Baban Sharma v. The State of Bihar (L.P.A. No. 664 of 2001) [reported in Baban Sharma Vs. State of Bihar and Others, on which the Court delivered its order on 26 November 2001. In this matter, the power to grant or reject a licence was conferred on a licensing authority i.e., the District Magistrate. Any person aggrieved by the order of the licensing authority may appeal to the Commissioner of local jurisdiction. While an appeal was pending before the Commissioner, the file was pulled up by the Minister. Virtually, the Minister was acting as an extra statutory appellate authority by interfering with process of the law and the functioning of both the licensing authority and the Commissioner for appeals. The present case is reflecting on the same situation. The Court cannot held recalling the dictum of the Supreme Court in the matter relating to Pratabpur Co. Ltd., (supra). In Bihar it is becoming a habit that the designed authority who is to carry on the functions of the Government assigned by law are virtually persona non grata and the record travels to the Minister to exercise a power not conferred by law. This phenomenon defies all canons of delegated legislation. The gazette which made an amendment to the Rule could not be produced at the time when the notification was filed. The notification was filed in Court on 28 August 2001. The Court was indicated by the State Counsel that the notification dated 31 July 2001 would take effect upon publication in the State gazette. The gazette was not forthcoming. An affidavit was filed on 18 September 2001. On that date a Deputy Secretary was attempting to explain the situation that he expresses regret in not being able to file a gazette on the date when the notification had been placed before the Court. The Court will leave this matter. Question will be asked that if a notification has been taken out on 31 July 2001 then the gazette should have been filed, if available, immediately upon the publication of the notification. But, this will not save any situation nor solve any problem and the controversy between the Petitioner, the cinema hall owners and the State will continue. Regard being had to the cases of the Supreme Court that the intention was to confer the power on the licensing authority, duality of control violates the equality clause of the Constitution of India, Article 14. Different persons could be treated at different authorities differently on the same subject. This notification is quashed. This then leaves Rule 27 intact and the matter will be subject to the Rule as it stood.

16. The spirit of the legislation under the Bihar Cinema (Regulation) Act, 1954 in the matter relating to regulating the rate of cinema ticket has been left to the rules i.e. the Bihar Cinema (Regulation) Rules, 1974. This is so because Section

9, particularly Sub-clause (a) of Sub-Section 2 permits the State Government to frame rules for the purpose of carrying into effect the provision of the Act. It is, thus that regulating the rate of admission fee is part of the conditions acknowledged by a cinema owner in the licence upon which he may carry on the business of running a cinema. The issue will always be there as to what should be the rate of a cinema ticket. The Court cannot identify the factors neither it should attempt to. The purpose of regulation or for that matter keeping a semblance of control on the price of a cinema ticket is to permit a reasonable return to the business which runs a cinema. These are certain statutory obligations of the cinema owner. These are: safety regulations unforeseen accidents like fire sanitary conditions and public conveniences maintenance of seats and premises, facilities like air-cooling or air-conditioning. These obligations are prescribed. When all these factors or any other which a cinema owner is obliged to undertake have been taken into account as an expenditure, another factor is the entertainment tax which goes into pricing a cinema ticket. The price of a cinema ticket is directly proportionate to the paying capacity of a person who will buy the ticket. On this will depend the reasonable return. In the circumstances the licensing authority is obliged to regulate the price of a cinema ticket in such manner that the cinema owner may have a reasonable return from the business of running a cinema without abdicating the obligations required to maintain it.

17. Today, in a free market economy and with the arrival of other modes of audio visual entertainment, the cinema as an industry particularly in so far as exhibition of motion pictures is concerned, has a rival the like of which had not been sent at the time when the Bihar Cinema (Regulation) Act, 1954 had been enacted. At that time, in India there was no television and the only other mode of entertainment by transmission was the radio. Today, the cinema faces rivals with television, cable vision, the video cassette and the compact disc. All these factors need to be taken into account by the State of Bihar and to become more flexible while regulating the rate of the cinema ticket. Excessive price and tax, and the resultant gross price of the ticket will avoid the customer in a free market. Prohibitive pricing will rake in less tax.

18. It is for this reason that the Court suggests that the licensing authorities must be encouraged as a decentralised exercise, which the law provides, to regulate the rate of cinema ticket to various classes. The price of the ticket will, thus, need a modulation from cinema house to cinema house and from district to district. The law has permitted the regulation of the rate of the cinema ticket to be decentralised to the licensing authority of local jurisdiction. The licensing authority would in any case seek the approval of the State Government on the rates so settled. It goes without saying that the licensing authority will be giving to the Government recorded reasons as to why it feels that the rate of a cinema ticket of a particular cinema house in particular district needs to be increased or does not need an increase. The purpose of giving a report to the Government is that the Government should know the factors upon which the licensing authority

has acted in either permitting the increase or denying it.

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 actuality 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 regulate the rate, the cinema owners particularly those outside 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, yet the explanation at the end of the notification permitted a lesser 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 that some cinema owners cannot run the cinema on the rates as prescribed. The flexibility has been taken out from the rates notified by 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 indicated recently, then the cinema owner should necessarily be permitted to seek a regulation from the licensing authority for a lesser rate. Thus, it would be in the fitness of things that the explanation which is added to the notification dated 29 July, 1994 may be implied to the rates notified, and indicated in the affidavit dated 20.8.2001.

To sum up:

(a) The rates which have been indicated by the State Government notwithstanding that there may not have been an exercise by the licensing authority, may be permitted to be charged 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 permitted by the local licensing authority to charge a lesser 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 latter will need to record reasons 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 forthcoming within 30 days of the licensing authority setting the rates.

21. The Petitioners have contended that the maintenance charge has not been reckoned by the State Government though the principle that the cinema owners are entitled to this charge is accepted. The contention of the cinema owners is that if they are called up by the law to meet the obligations to provide for certain facilities then all this must be a component which goes into maintaining the cinema. The Petitioner contends that the State Government while accepting the principle that maintenance is an expense, the charge is not being permitted to the cinema owners. The cinema owners are being told that the law has not provided it so, and the Act would need an amendment. This aspect should not be mixed up with the matter relating to the regulation of a cinema ticket at the hands of a licensing authority of local jurisdiction as opposed to the extra statutory exercise at the hands of the Minister which was undertaken in abdicating the licensing authority of local jurisdiction. The matter relating to maintenance charge, whether with tax or without tax, may become the subject matter between the cinema exhibitors and the State Government as a separate issue. The Court, is confining itself to the aspect of power being exercised, in context, by the licensing authority of local jurisdiction in settling the rate of a cinema ticket.

22. Petition allowed. There will be no order as to costs.