
(1979) 05 DEL CK 0031

In the Delhi High Court

Case No : Civil Writ No's. 173, 579 to 585 and 606 to 610 of 1979

Durga Chand Kaushish and Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 15-05-1979

Acts Referred:

Citation : AIR 1979 Delhi 249 : (1979) 2 ILR Delhi 730

Hon'ble Judges : V.S. Deshpande, C.J.; Harish Chandra, J

Bench : Division Bench

Advocate : V.M. Tarkunde, R.S. Narula and S.S. Ray, Ramesh Chandra, Anil Bhatnagar and U.K. Khaitan, for the Appellant; R.M. Gupta, for the Respondent

Judgement

Harish Chandra, J.—These 13 petitions are based on similar facts and involve identical, questions of law. They were heard together and will be disposed of by this judgment.

2. There are a number of contentions made and relief's prayed for in these petitions but the learned counsel for the petitioners have, before us, confined their challenge to the validity of Rule 45 (xiii) of the Delhi Cinematograph Rules 1953 (hereinafter referred to as "the Rules", and condition 8-A in the conditions contained in proforma of a license given in the said Rules and the Notifications No. F. 2/45/75-Fin(G) dated 30-10-1975 and 15-11-1975, containing orders issued by the Lt. Governor of Delhi under Rule 45 (xiii).

2-A. The Rules were framed in the purported exercise of the power conferred on the rule-making authority by Section 16 of the Cinematograph Act, 1952 (hereinafter referred to as "the 1952 Act").

3. The impugned Rule and the Condition confer power on the . Lt.Governor of Delhi for the approval of the rates of admission to the auditorium and the power so conferred is in substance in the nature of power of price control. The impugned Rule and Condition are set out hereunder

"Rule 45, Clause xiii:

The rates of admission to the auditorium shall be fixed or revised only with the prior approval of the Lt. Governor of Delhi."

"Condition No. 8-A:

The Licensee shall not fix or revise the rates of admission to the auditorium except with the prior approval of the licensing authority."

4. By the first impugned notification, the Lt. Governor ordered, "the rates of admission in all the permanent cinemas shall stand reduced by 10% in respect of all the classes.

5. The second notification was in continuation of the first and showed the revised rates of admission corresponding to the existing rates of admission after effecting the reduction by 10 per cent.

6. The first and foremost argument of the learned counsel for the petitioners is that regulation of the rates/ price of entry tickets to the auditoriums/cinema halls is neither a purpose sought to be achieved by enacting the 1952 Act nor is there any indication whatsoever in the said enactment that it can be resorted to for achieving any of the purposes of the Act. From this premise, the learned counsel have submitted the following propositions:

1. Section 16 of the Act does not confer any power on the Central Government either to make a rule like Rule 45 (xiii) or to prescribe, a condition like condition 8-A subject to which a license may be granted and making of the said rule or framing of the said condition is beyond the rule making power conferred on the Central Government by the aforesaid provision and, Therefore, ultra virus of the 1952 Act and liable to be struck down and declared as non est;

2. If Section 16 of the 1952 Act is construed to confer necessary power on the Central Government for framing such a rule or setting down. Such a condition in the license, to the extent Section 16 purports to do so, it is bad for excessive delegation;

3. Even if Section 16 of the 1952 Act confers power on the rule-making authority for framing such a rule or setting down. such a condition in the license, the rule and the condition, as actually framed, do not contain. any relevant guidelines and, being arbitrary, contravene the rights conferred on the petitioners by Art. 19 (1) (g) of the Constitution of India.

7. We may first examine the 1952 Act. It is a short enactment of 18 Sections divided in four parts. The first part is "Preliminary" and Part IV deals with repeal. The relevant Parts are Parts II and III only. Part II consisting of Sections 3 to 9 provides for certification of films for public exhibition, and deals with approval/ censorship of films before the same are certified as suitable for unrestricted or restricted exhibition. It thus deals with a subject wholly different from rates of admission or price control. Part III, consisting of Sections 10 to 17, deals with

regulation of exhibitions by means of cinematograph. The opening section, Section 10, prohibits exhibition by means of cinematograph ".....elsewhere than in a place licensed Or otherwise than in compliance with any conditions or restrictions imposed by such license". Section 11 provides for the setting up of a Licensing Authority and Section 12 lays down restrictions on powers of Licensing Authority and provides that a license shall not be granted unless the Authority is satisfied that-

(a) the rules made under this Part have been substantially complied with, and

(b) adequate precautions have been taken in the place, in respect of which the license is to be given, to provide for the safety of persons attending exhibitions therein.

8. Sub-section (2), of Section 12 provides that

"Subject to the foregoing provisions of this section and to the control of the State Government. the licensing authority may grant licenses under this Part to such persons as that authority thinks fit and on such terms and conditions and subject to such restrictions as it may determine."

9. Section 13 confers power on Central Government or local authority to suspend exhibition of films if such exhibition is likely to cause breach of the peace. Section 14 lays down penalties for contravention of Part III. Section 15 provides for the revoking of license and Section 16 confers rule-making power on the Central Government. The last section of this Part confers power of exemption.

10. From a perusal and careful scrutiny of these provisions we do not find any provision which provides for price control either as a purpose or as a means to achieve a stated purpose. The only purpose of Part Iii of the Act is to ensure safety of persons attending exhibition of films as emphasised by Section 12. Such safety may, of course, Include considerations of health and sanitation, non-overcrowding, ventilation and any other analogous consideration but cannot include the control of the rates of admission to the cinema auditoriums, i.e., the, control of the price of cinema tickets.

11. We have examined the provisions of the 1952 Act to find out if the same disclose, "either apparently or otherwise", a policy guiding the exercise of power claimed to be derived from the enactment. With this in mind, we may re-examine the concluding words of sub-section (2) of Section 12 on such terms and conditions and subject to such restrictions as it may determine". These words may appear wide and unrestricted but it cannot be emphasised enough that they have to be read in the context in which they appear and must be understood to mean only such conditions and restrictions as pertain to the purpose of Part Iii which is set out in sub-section (1) of Section 12.

12. We have, Therefore, no hesitation in coming to the conclusion that regulation of the rates of admission to cinema auditoriums is not a policy stated in the 1952 Act. It is neither a purpose sought to be achieved by the said Act nor a means to

achieving any other purpose stated in the Act.

13. This leaves only Section 16 for a perusal and careful scrutiny. The power conferred is specific and C1s. (a), (b) and (c) are not illustrative but exhaustive of the subjects on which rules can be made. Clause (b) specifies the subject as regulation of cinematograph exhibition for securing the public safety and clause (c) specifies the subject as the time within which and the conditions under which an appeal under sub-section (3), of Section 12 may be preferred. These subjects being patently different from what we are searching in these provisions, namely price control, do not need to detain us. This leaves clause (a) alone to be examined. Clause (a) reads as under:

"(a) prescribing the terms, conditions and restrictions, if any, subject to which licenses may be granted under this Part;"

14. Once again, like the concluding portion of sub-section (2) of Section 12, the words of clause (a) do not specify the subject or the conditions and restrictions to be contained in the license in respect of which the rule-making authority has been conferred but as it is elementary that the rules to be followed must be for facilitating the achieving and carrying out of the purposes of the Act, such purposes set down the limits of the framing of such rules so that a rule to be valid must pertain to such purposes. We have already held that the regulation or control of the cinema admission tickets is not the purpose of the Act and we have no hesitation in holding that clause (a) of Section 16. or Section 16 as such, does not confer any power on the Central Government to frame rules providing for the regulation of the rates of admission to the cinema auditorium.

15. There are several facts and circumstances which we refer to now which, in our opinion, support this view.

16. The history of legislation on the subject is referred to in the Statement of Objects and Reasons of the Cinematograph Act, 1918. The statement shows that before the 1918 Act there existed certain scattered provisions affecting cinematograph exhibitions and certain local enactments. With the rapid growth in the popularity of cinematograph and increasing number of such exhibitions in India. the then existing legal provisions were found to be inadequate for the protection of the public from indecent or otherwise objectionable representations. Further, the special danger from fire which attends cinematograph exhibition, as has been illustrated by terrible catastrophes due to this cause in other countries, rendered it important to secure, in the interest of safety of spectators, a proper regard to the structural conditions of the premises utilised.

17. This object led to the enactment of the 1918 Act. Sections 3, 4, 5 and 6 of the 1918 Act embodied the objects. Section 3 provided for the licensing of cinematograph exhibition; Section 4 provided for naming the licensing Authority. Section 5 specified conditions on which a license may be granted and Section 6 dealt with the certification of films.

18. The 1918 Act was followed by the present Act. In the statement of Objects and Reasons of this Act, it is recalled that the 1918 Act dealt with "two separate matters, namely (a) examination and certification of films as suitable for public exhibition and (b) regulation of cinemas including their licensing".

19. It is, thus, clear that the 1918 Act did not contain even a whisper about the control of the rates of admission to cinema auditoriums.

20. In the said statement of Objects and Reasons of the 1952 Act, the purpose of this enactment is made clear in the following words:

"The purpose of the present Bill is to resolve the confusion by re-enacting the provisions of the Act of 1918, as amended in 1949, separating the provisions relating to the sanctioning of films for exhibition (a Union subject) from the provisions relating to licensing and regulation of cinemas (a State subject)".

21. This makes it clear that neither the 1918 Act nor the 1952 Act seek to achieve the purpose of controlling the rates of admission to cinema auditoriums or any purpose akin thereto. It may here be noted that not only there was no rule like Rule 45 (xiii) nor a condition like condition 8A following the 1918 Act, but that such a rule or condition did not exist and was not framed for nearly 13 years following the 1952 Act. It was only by a notification dated 6th May 1965 that Rule 45 was amended by introducing sub rule (xiii) and by introducing condition 8A in Schedule 2 to the said Rules, By doing so, the rule-making authority sought to introduce a wholly new dimension to the purposes of the legislation on the subject after nearly 47 years by a mere executive fiat.

22. It may be mentioned that there appear to be only three enactments providing for price control in India. The first is the Essential Commodities Act, 1955, Sections 3(1) and 3(2)(c) of which leave no manner of doubt about the purpose of the enactment and the provisions for controlling the price therein. The second enactment is the Industrial (Development and Regulation) Act, 1951, Sections 18G(1) and 18G(2)(a) of which provide in so many word for the controlling of prices of the articles covered by the ambit of the enactment. The only other provision providing for price control in India is the emergency legislation, the defense of India Act, 1971. Section 3 of the Act confers rule-making power and expressly mentions the subject of maintaining supplies and services essential to the life of the community. Sub rule (3) of Rule 125 of the Rules framed under the Act clearly provides for an order fixing prices.

23. It will thus, be seen that the legislation touching upon price control in India has always been specific and eloquent and this reasonable even though important, restriction on the right to carry on business has never been sought to be achieved indirectly or by implication and without setting out a statement of the policy of the legislature in this behalf. In fact, numerous price control orders made in India derive their authority from one or the other of the aforesaid enactments and their validity has always been adjudged having regard to the provisions of these principal enactments.

24. This brings us to the second contentions of the learned counsel for the petitioners that if Section 16(a) of the Act could be construed as conferring power on the Central Government to frame Rule 45 (xiii) and condition 8A, then the said rule suffers from the vice of excessive delegation in so far as it confers powers on the rule-making authority to frame rules beyond the -purpose of the Act.

25. The subject of excessive delegation has been considered by the Supreme Court as early as 1951 in the leading case of the Delhi Laws Act AIR 1951 Sc 332 where the Court affirmed the validity of the Indian legislature, both at the centre as well as in the State, delegating to an outside instrumentality the carrying into operation the purpose of an enactment but laid down condition for such validity, namely, that in making such delegation, the legislature itself must enact the policy and the purpose of the enactment and should not, in other words, abdicate or efface itself. The subject came up to be considered by a Full Bench of the Madhya Pradesh High Court in State Vs. Haidarali, . The Court considered a spate of U. S. decisions along with a number of Indian decisions, including the Delhi Laws Act case, and noted on page 182 that the Supreme Court has held that

"where power is conferred upon a subordinate agency by the legislature, it should be conferred in such a way as not to amount to an abdication by the legislature itself and also that uncontrolled and arbitrary and naked powers conferred upon an outside agency are unreasonable if they infringe the fundamental rights"

26. Again, on page 188, para 32, the Court speaking through Hidayatullah, C. J. noted the law as laid down by the Supreme Court, in the following words:

"From all this discussion it Therefore appears that though the Supreme Court in India has not accepted the doctrine of separation of powers as applied in the American and the Australian Constitutions, the Supreme Court has also laid down that all the essential law-making must be done by the Legislature itself. What is meant by "essential law-making" is defined by them as the policy and the intent and purpose of the law. Thereafter, according to the Supreme Court, delegation is perfectly valid so that the details of the law may be filled in by the designated authority."

27. A lacuna or absence of policy and purpose relatable to regulation or control in the principal Act cannot be removed or cured by the same being set out in the rules or regulations framed by an authority delegated by the Legislature to do so as a rule-making authority has no plenary powers and in so doing it would have transgressed the limits of power granted to it. In Bimal Chandra Banerjee Vs. State of Madhya Pradesh etc., , the Supreme Court observed on page 472, in para 13, as follows:-

"No tax can be imposed by any byelaw or rule or regulation unless the statute under which the subordinate legislation is made specially authorises the imposition even if it is assumed that the power to tax can be delegated to the

executive. The basis of the statutory power conferred by the statute cannot be transgressed by the rule-making authority, A rule-making authority has no plenary power. It has to act within the limits of the power granted to it."

28. Quite apart from the vice of excessive delegation that the R. 45 (xiii) and condition 8A suffer from because of the absence of the statement of policy on the subject or enunciation of a purpose relatable to be sought to be achieved, in the Act the Rule and the Condition are bad also because the same do not spell out a guideline for its operation and implementation, a criterion for action under it, an index at which the reasonableness of an order issued under it can be tested. The rule and the condition, therefore, constitute an unreasonable restriction on the fundamental right guaranteed to the petitioners under Art. 19 (1) (g) of the Constitution of India. .

29. In *LaLa Hari Chand Sarda Vs. Mizo District Council and Another*, , the Supreme Court considered an order issued under the Lushai Hills District (Trading by non-Tribals) Regulation refusing to grant a further annual renewal of a license to carry on trade of money lending on the ground that the number of licenses had reached the maximum. In para 10 on page 83 the Court observed;

"Even if a statute lays down a policy it is "inconceivable" that its implementation may be left in such an arbitrary manner that the statute providing for such implementation would amount to unreasonable restriction. A provision which leaves an unbridled power to an authority cannot in any sense be characterised as reasonable." The Court proceeded to hold that:

"Section 3 of the Regulation which was under consideration being one such provision was liable to be struck down as violative of Article 19(1)(h)."

30. The learned counsel for the petitioners have urged a fall back contention that even if Section 16 of the Act is construed to confer power on the rule-making authority to frame a rule in "the nature of a rule to effect price control and even if Rule 45 (xiii) and condition 8A have been validly framed, an order made by the impugned notification dt. 30-10-1975 could not have been made under the aforesaid rule and condition of license.

31. The argument is that under the aforesaid provisions it is the licensee who has first to fix or revise the rates of admission to the auditorium and then propose the same to the Lt. Governor for approval and the Lt. Governor can only accord or refuse to accord approval. Thus, during the currency of the license which the petitioners were granted and held on the eve of the notification dated 30-10-1975 the rates had already been fixed and approved and as the licensees did not propose a revision of rates, the Lt. Governor could not suo motu revise them downwards by the said notification.

32. It does appear that all that Rule 45 (xiii) read with condition 8A does is to prohibit the licensee from fixing or revising the rates except with the prior approval of the Lt. Governor and if the licensee, who has once fixed the rates and

obtained approval for the same, does not need or choose to revise them, the Rule and the Condition is not attracted as the prohibition contained therein is not flouted. The Lt. Governor cannot, however, on his own revise the already fixed rates and this is exactly what is sought to be done by the notification of 30-10-1975 read with the notification of 15-11-1975. We Therefore, find the argument sound and logical and accept the same.

33. Learned counsel for the petitioners have laid great stress in showing that the prices of articles/commodities/services relevant to the trade having increased and rates of admission having remained static and frozen for at least 10 years, an order reducing the rates by 10% apart from being illegal and arbitrary is also wholly unjust.

34. Whether a price control is just or not, depends upon the facts of each case. The only material placed on record in these cases relates to the increase in prices of relevant articles, commodities and services. This material is not at all sufficient to come to a conclusion about the justification or otherwise of the order by which the rates of admission were sought to be reduced by 10%. In any case in the view we have taken about the validity of the impugned rule, condition and notifications and paucity of material on record, we do not consider it necessary to decide this issue.

35. For the foregoing reasons, we hold that Rule 45 (xiii) and Condition 8A inserted in the 1953 Rules by amendment in 1965 are beyond the rule making power conferred by Section 16 of the Cinematograph Act 1952 and are otherwise bad in law and are quashed.

36. Even though the purpose of the reduction in the rates of admission to cinema auditoriums, sought to be achieved by the impugned notifications, may be laudable, we are constrained to hold that notifications dated 30-10-1975 and 15-11-1975, having been issued in pursuance of the provisions of Rule 45 (xiii) of the 1953 Rules, are bad in law as the said Rule itself has been found by us to be bad in law. The notifications are, Therefore, quashed.

37. The petitions are, Therefore, allowed as above but in the circumstances, with no order as to costs.

38. Petitions allowed.