
(1999) 09 MAD CK 0051

In the Madras High Court

Case No : W.P.Nos. 10048 to 10053, 10121 to 10126, 10711 and 10964 of 1999

Dursha Shariff

APPELLANT

Vs

State of Tamil Nadu and another

RESPONDENT

Date of Decision : 30-09-1999

Acts Referred:

Constitution of India, 1950 — Article 38

Tamil Nadu Cinemas (Regulation) Act, 1955 — Section 10, 5

Citation : (2000) 2 CTC 206

Hon'ble Judges : K. Govindarajan, J

Bench : Single Bench

Advocate : Mr. R. Muthukumaraswamy, Mr. Kulasekaran and Mr. K. Kumar, for the Appellant; Mr. T.R. Rajagopalan, A.A.G., for the Respondent

Judgement

1. In all, the writ petitions, the petitioners are seeking to declare Rule 91-B of the Tamil Nadu Cinemas (Regulation) Rules 1957 introduced by

G.O.Ms. No.678, Home (Cinemas-II) Department, dated 18.5.1999 as unconstitutional, illegal and void.

2. Writ Petition Nos.10121 to 10126 of 1999 and 10048 to 10053 have been filed by the contractors who got right from the licensees of the

respective cinema theatres to maintain parking of cars, motor-cycles and cycles in the cinema theatres and to collect fees from the vehicle owners

who park their vehicles in the parking place. The Tamil Nadu Film Exhibitors Association, Coimbatore, Erode and Nilgiris Districts have filed

W.P.No. 10964 of 1999 challenging the said Rule. The licensee of the theatre, has filed W.P.No.10711 of 1999, challenging the said rule.

3. For the regulation of exhibition in the screening of cinematograph in the State of Tamil Nadu, the Tamil Nadu Cinemas (Regulation) Act, 1955,

hereinafter called "the Act", has been enacted. Section 10 of the Act gives power to then Government to make Rules to carry out the purpose of

the Act. Admittedly, before introducing section 10(2)(1) of the Act, there is no provision u/s 10 of the Act giving power to make Rules to fix the

fees for the parking of vehicles in the premises of cinema theatres. But, there are provisions to establish parking place for the vehicles. Rule 102-A

of the Rules compels the licensee to provide suitable cycle stand and to make arrangements for the safety of the cycles. Condition No.16 of form-

C which also forms part of then Rules directed the licensee, apart from cycle stand, to provide arrangement to look after the cars, scooters and

motor-vehicles which are brought to the licensed premises.

4. For the first time, an amendment to section 10(2) of the Act by introducing section 10(2)(1) of the Act was introduced in the Legislative

Assembly on 20.3.1998. The same was assented by the Governor of Tamil Nadu on 23.9.1998 and was published in the Tamil Nadu

Government Gazette on 30.3.1998. The said amendment by introducing sub-section 2(1) to section 10 of the Act reads as follows:-

10(2)(1) :- The fees to be collected by the licensees for parking vehicles in the premises of cinema theatre"".

Exercising the said power, the Government of Tamil Nadu introduced a provision viz., Rule 91-B by issuing G.O.Ms.No.678, Home (Cinemas -

II) Department dated 18.5.1999, which was published in the gazette and brought into effect on and from 20.5.1999. The said Rule 91-B reads as

follows:-

91-B:- The licensee of a cinema theatre may collect a fee for parking vehicles in the premises of the cinema theatre as specified in the table

below:-

TIME TABLE

Fees to be collected

Area Car/Three Wheeler Two wheelers Cycles

vehicles(Motor) (Motor) (c)

(a) b) Rs. P.

Rs. P. Rs. P.

1 . Corporation/District Hear Quarters/Grade I 3.00 2.00 1.00

Municipalities

2. Municipalities other than Grade I Municipalities 2.50 2.00 1.00

3. Town Panchayats Village Panchayats 2.00 1.00 0.50

Aggrieved by this Rule, the petitioners have filed the above writ petitions.

5. Mr. Muthukumaraswami, learned senior counsel appearing for the writ petitioners who are the contractors in the respective cinema theatres, has

submitted that though the Government have power in view of the amendment to regulate the parking of vehicles in the cinema theatres, they cannot

arbitrarily fix the rates without taking into consideration of various factors regarding expenses incurred towards providing and maintenance of

parking space, and they cannot fix the uniform rate without looking into the expenses incurred for providing the said amenities with respect to the

respective theatres.

6. Mr.Kumar, learned counsel appearing for the petitioner in W.P.No.10711 of 1999 has submitted that such arbitrary fixation is contrary to the

decision reported in Royal Arts, Coimbatore Vs. State of Madras and Another, , and so the same has to be struck down. He has also submitted

that the Rule providing power to the Government to fix the rates with respect to the parking of vehicles is beyond the scope of the act itself, and so

the said Rule cannot stand in the eye of law.

7. Mr.Kulasekaran, learned counsel appearing for the petitioner in W.P.No.10964 of 1999 relying on G.O.Ms.1810 Home (Cinema II)

Department dated 21.12.1993, in which the Government had proposed to amend the Rule, has submitted that the rule as amended cannot be

sustained as it does not reflect the intention of the Government as set out in the Government order. According to him, the quantum of fee fixed by

the Government at uniform rate is without taking into account of the actual expenditure in providing and maintaining the parking place, and facilities

provided in each and every cinema theatre. He has also submitted that many cinema theatre provided concrete roof and requisite flooring. The said

provisions made by the theatre owners involve several lakhs of rupees and the expenses also vary from theatre to theatre, area to area, village to

village and municipality to municipality.

8. The learned Additional Advocate General has submitted that the Government

have introduced the Rule 91 -B fixing the rates after taking into consideration of various aspects and the reports submitted by the Joint Commissioner (Cinema) Land Administration Department. The learned Additional Advocate General relying on condition No.16 in form-C licence, has submitted that providing parking place is a must as per the said condition and the licensee has to take adequate precaution to provide safety, convenience and comfort to those who attend the exhibition therein.

He has also submitted that the act does not permit to collect any fees for parking the vehicles though such parking is compulsory as per the condition provided in the license. He has further submitted that since the licensees have provided such parking space as per the licence condition, it has to be taken that they have been collecting charges even for the same in the ticket issued for seeing motion picture and so they cannot come forward with the plea that the rates now fixed are very low and arbitrary. With respect to the power to amend the Rule, the learned Additional Advocate General has submitted that the Act itself has been enacted only to regulate the exhibitions by means of cinematograph in the theatres of Tamil Nadu. The parking space which is the subject matter in the writ petitions forms part of the cinema theatres and the same is provided for the benefit of the cinema goers. As the impugned Rule has been introduced to regulate such parking place, it cannot be said that the impugned Rule is beyond the scope of the Act. The learned Additional Advocate General has relied on Section (2)(a)(4) of section 5 of the Act in support of his submission. Regarding the obligation of the licensee to provide suitable cycle stand, he has also relied on Rule 102-A of the Rules.

9. The main grievance of the petitioners is that the rates fixed by introducing Rule 91-B of the Rules with the respect to the collection of fees for parking vehicles are very low and the same have been fixed arbitrary without reference to the facilities provided for and without taking into account of the actual expenditure in providing and maintaining the parking space in each and every theatre. Some of the petitioners have questioned the validity of the amendment to section 10 of the Act by introducing sub-section 2(1), as it is beyond the scope of the Act IX of 1955.

10. Before dealing with the first aspect, I am inclined to deal with the second aspect, i.e., the validity of section 10(2)(1) of the act. According to

the learned Additional Advocate General, the said Act is to provide for regulation of exhibition by means of cinematograph in the State of Tamil

Nadu. Under condition No.16 in "C" form licence and also under Rule 102-A of the Rules the licensee shall provide a suitable cycle stand for

cycles that may be reasonably expected to be brought and arrange for taking care of them and shall also make necessary arrangements to look

after the cars, scooters and motor-cycles which are brought to the licensed premises. When the licence has been issued on those conditions, the

amendment is only by way of regulation to regulate the parking place which forms part of the theatre for which the petitioners have got license. So,

it cannot be said that the introduction of sub-section 2(1) to section 10 of the Act is beyond the scope of the act IX of 1955. The said Rule has

been introduced only to carry out the purpose of the Act. The term "Regulation" is a word of broad import having wide meaning comprehension all

facts specifically enumerated in the said Act and also embraces within its fold the powers incidental to the regulation, with a view to achieve the

public welfare or imposed with the interest of public. While considering the power of the Government to fix the rates of admission, the Apex Court

in Deepak Theatre, Dhuri Vs. State of Punjab and others, , has held as follows:-

5. Witnessing a motion picture has become an amusement to every person; a reliever to the weary and fatigued; a raveller to the pleasure seeker;

an imparter of education and enlightenment enlivening to news and current events; disseminator of scientific knowledge; preparator of cultural and

spiritual heritage, to the teeming illiterate majority of population. Thus, cinemas have become tools to promote welfare of the people to secure and

protect as effectively as it may a social order as per directives of the State Policy enjoined under Art. 38 of the Constitution. Mass media, through

motion picture has thus become the vehicle of coverage to disseminate cultural heritage, knowledge, etc. The passage of time made manifest this

growing imperative and the consequential need to provide easy access to all sections of the society to seek admission into theatre as per his paying

capacity. Though the right to fix rates of admission is a business incident, the appellant having created an interest in the general public therein, it has

been become necessary for the State to step in and regulate the activity of fixation of maximum rates of admission to different classes, as welfare

weal. Thereby fixation of rates of admission became a legitimate ancillary or incidental power in furtherance of the regulation under the Act. Access

to and admission into theatre is a facility and concomitant right to a cine goer public. Classification of seats and fixation of rates of admission

according to paying capacity of a cine goer is also an integral power of regulation. Power to fix rates of admission included power to amend and

revise the rates from time to time. The statute vests that power in the licensing authority subject vests that power in the licensing authority subject to

control by the State Government. The fixation of the rates of admission has thus become an integral and essential part of the power and regulation

of exhibition of cinematograph"".

11. The submission of the learned counsel appearing for the petitioners that they are providing amenities and so they are entitled to collect fees on

that basis, which cannot be interfered with by the authorities, cannot be accepted. The said amenities have been provided for only for the cine

going public and thereby ceases to be jurist privati and clothed with public interest. When the said amenity has been created to the cine going

public for which the owner has got license to the theatre, the private property of the owner is affected with public interest and so the license has

given unrestricted power or freedom to fix the fee at his will, but it has to be regulated under the Rules and the conditions of license; it is clothed

with public interest as cine going public acquire direct and positive interest to have easy access of admission into the said parking place.

12. So, the submission of the learned counsel appearing for the petitioners, challenging the said provision, namely, section 10(2)(1) of the Act is

beyond the scope of the Act and it affects their fundamental right to collect fees for providing amenities cannot be countenanced, and it has to be

upheld.

13. Now we can deal with the validity of Rule 91-B of the rules in which specific amounts have been fixed in general to levy of fees for parking

vehicles in cinema theatres.

14. The learned Additional Advocate General has submitted that the licensees have been collecting fees along with admission tickets as the rates

have been fixed by Licensing Authority under Rule 83(1-A) of the Rules and the fees noted is only in addition to the same and so the petitioners

cannot have any grievance. Merely because the licensees have to provide amenities for parking place, it cannot be said that the admission fee collected from cine goers includes the said fee. The admission fee is only for exhibiting the film, but, of course the rate is fixed on the basis of the facilities provided by the licensees. Moreover, an argument was made to the effect that there is no provision under then act and the Rules to collect fees for parking vehicles. The said submission need not be considered, as, in view of the amended provision, the licensees are entitled to collect fees. The dispute is only with respect to the quantum of the rate fixed.

15. The Government issued an order in G.O.Ms.No.1810 Home (Cinema-II) Department dated 21.12.1993 asking the Commissioner of Land

Administration to send necessary draft amendment to the Tamil Nadu Government Order, the Government have dealt with certain aspects while passing the same, as it is necessary to deal with the issue, which is extracted as follows:-

3. The Government have examined the question of collection of fees for parking vehicles in cinema theatres, in detail taking into account all aspects.

It is considered that as it is obligatory on the part of the licensees to make arrangements for parking of vehicles, regulation of this practice is

necessary. The Government have therefore decided to empower the Licensing Authorities to fix the actual rates to be collected by the licensees for

the vehicles parked in cinema theatres taking into account the expenditure involved in maintaining parking place and the facilities provided by

suitably amending Tamil Nadu Cinema, as (Regulation) Rules, 1957. They accordingly direct that the Licensing Authorities be empowered to fix

the actual rates to be collected by the licensees for the vehicles parked in the cinema theatres taking into account the expenditure involved in

maintaining parking place and the facilities provided by suitably amending Tamil Nadu Cinemas (Regulation) Rules, 1957".

16. In the abovesaid order, the Government felt that the licensing authorities should be empowered to fix the actual rate to be collected by the

licensees for the vehicles parked in the cinema theatres, taking into consideration of the expenditure involved in maintaining the park places and the

facilities provided for. Contrary to this decision, now as per the impugned Rules, the rates have been fixed in general without reference to the

nature of amenities and facilities provided by the respective theatres. Though in the counter, it is stated that the particulars have been called for in

respect of existing rates for parking vehicles in the respective cinema theatres, namely, cycles, motor-cycles, and cars, on the basis of the report

from the Joint Commissioner (Cinemas, no materials are available before the Court. Though the Government is empowered to fix the rates, such

rates have to be fixed on the basis of the nature of the amenities and facilities provided by each theatre, and also the expenses incurred by them to

provide the same. The amended Rule 91-B of the Rules does not reflect the policy of the Government in fixing the rates as made in

G.O.Ms.No.1810 Home Department dated 21.12.1993.

17. The amount which is being collected by the petitioners is only a fee and there has to be a correaltionship of a general character between the

cost of rendering such service and the fee charged. The Courts have categorically held that the levy of fee must be by and large quid pro quo for

the services rendered, though correaltionship between levy and service rendered /expected is one of general character and not of mathematical

exactitude. So, though the Government have power to regulate such levy, they should have taken into consideration of the abovesaid principles.

18. Even giving power to fix the rates of admission by the licensing authorities under Rule 83(1-A) of the Rules, it is specifically stated that they

have to take into account the amenities provided in the respective theatres, and other aspects, and also power is given to refix the rates. While

dealing with the said provision, the Division Bench of this Court in the judgment in Writ Appeal Nos.1326 to 1338 of 1997 etc., dated 3.3.1998,

has held as follows:-

the rates of admission fixed by the Licensing Authority either at the time of grant of C-form licence or subsequently could be revised from time to

time by the Licensing Authority, but subject to the Licensing Authority satisfies itself with respect to the parameters or matters provided in clause

(a) of Rule 83(1A) of the said Rules"".

Even in the decision reported in Deepak Theatre, Dhuri Vs. State of Punjab and others, it is held that the licensing authority has to fix the rates of

admission after taking into account of various aspects mentioned therein.

19. White dealing with the power of the Government to fix the rate of fees

payable by the cyclists for parking in the parking place provided by the licensees, Ramakrishnan, J. as he then was, in the decision reported in Royal Arts, Coimbatore Vs. State of Madras and Another, has held as follows:-

It is contended by the petitioner that it was entirely outside the jurisdiction of the authorities whether it be the Government or the licensing

authority, to prescribe for the charges which the petitioner should levy on the users of his cinemas hall whether it be for the value of the tickets

purchased by the people who come thereto witness the shows or for the licence fee charged to those people who have come to witness the show

and who feel the necessity of parking their cycles outside the theatre and for that purpose use the stand which the management has provided. Just

as in the case of levy of charges for the tickets for witnessing shows, for which the proprietor has full discretion, he will also have a similar

discretion in the matter of levying charges for the use of the amenity of cycle stand which he has provided. For the first mentioned proposition

cinema shows is entirely within the discretion of the licensee and cannot be interfered with by any Rule which may be issued by the licensing

authority, learned counsel for the petitioner refers to an unreported decision of Veeraswami, J., in Messrs, Universal Theatre, Tiruppur v. Collector

of Coimbatore(Mad.) W.P.No.174 etc. of 1960, where the learned judge struck down as illegal an order by which the licensing authority directed

a cinema licensee to charge the same rate for people occupying the bare floors for witnessing the shows. but in the present case, apart from the

principle laid down in the decision above cited, the impugned order itself states that what is to be collected from the users of the cyclestand is a fee

for such user. In that event, the licensee can correlater the quantum of the fee to the actual expenses incurred for providing amenities. That will

again depend upon the salary he pays to the care-takers and may other expenses like lighting, cost of the upkeep of the stands and so on provided

at the cycle-stand. Therefore, to prescribe an invariable maximum for the fee, without taking into account the actual expenditure that the licensee

may have to incur for providing the service or amenity in question will be entirely ultra vires and illegal. Therefore, I have no doubt that the rule

mentioned above providing for an upper limit for the fees to be collect from the

user of the cycle-stand was beyond the jurisdiction of the rule-making authority. Hence, that part of the rule which prescribes that the fee collected from the users of the cycle-stand should not exceed 5nps. for each cycle is struck down as ultra vires and beyond the competency of the rule making authority. No order as to costs"".

20. The learned Additional Advocate General has submitted that the abovesaid decision cannot be relied on as there was no provision during the relevant period to enable the Government to fix the fees, and so the learned judge has come to such conclusion. I am not able to accept the said sub-mission. The learned judge has held that the condition regarding fixation of fee is not only on the basis that there is no power under the Rules to make such condition, but also on the basis that the same was done without taking into consideration of the actual expenses incurred for providing amenities, and other aspects. So the second aspect of the said decision would squarely apply to the facts of the present cases.

21. In view of the above discussion, I hold that though the Government is having power to regulate the collection of fees for parking the vehicles in the premises of cinema theatres, Rule 91- B of the Rules in so far as it fixes the fixed rates in general, to be collected as fees for parking the vehicles in the place provided in the respective cinema theatres, cannot be sustained, as the said rates are not fixed taking into consideration of the various aspects regarding the expenses incurred for providing the amenities by the licensees, and so the said rule to that extent is struck down. It is for the respondents to fix the same taking into consideration of the abovesaid observations.

22. For the reasons stated above, these writ petitions are accordingly allowed to the above said extent. No costs. Consequently, W.M.P.Nos 14404 to 14409, 14300 to 14305, 15499, 15500 and 15169 of 1999 are closed.