
(1979) 11 DEL CK 0011

In the Delhi High Court

Case No : Civil Writ Petition No. 1010 of 1979

Isherdas Sahni and Bros. and another

APPELLANT

Vs

The Delhi Administration and others

RESPONDENT

Date of Decision : 29-11-1979

Acts Referred:

Citation : AIR 1980 Delhi 147

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

Bench : Division Bench

Advocate : R.S. Narula, with U.K. Khaitan and Anil Bhatnagar, for the Appellant;
S.C. Malik with S.K. Mahajan, for the Respondent

Judgement

V.S. Deshpande, C.J.—The petitioner herein as also the petitioners in the connected writ petitions are holders of licences to run cinemas under the Cinematograph Act, 1952 (hereinafter referred to as the Act) and the Delhi Cinematograph Rules, 1953 (the rules) made thereunder. For some years, the Delhi Administration has been regulating the rates at which cinema tickets could be sold by the holders of the licences for running the cinema theatres in Delhi. In 1975, there was a general cut of 10% in the rates which had been already fixed by the Delhi Administration for the sale of cinema tickets. The holders of these licences felt aggrieved by the said cut. They made representations to the Delhi Administration pointing out that already the expenses of exhibiting films and maintaining the cinema theatres had gone up for a number of years and the rates which had already been fixed were already proving unbearable and on top of it, the cut of 10% was making it uneconomical for the licensees to run the cinemas. The representation of the National Association of Motion Picture Exhibitors was considered by the Lt. Governor and the Administration agreed to allow the licensees to add to the existing number of seats in the cinema theatres to make good the loss caused to the licensees by the reduction in the rates by 10% which was made in 1975.

Accordingly, the Administration consulted the Chief Fire Officer whose duty it was

to ensure that the number and arrangement of seats is such that in case of fire evacuation of theatres would not be impeded. They also consulted the Municipal authorities whose duty was to ensure that considerations of public health are satisfied in the number of seats and in the way they are arranged as also the provision of other facilities to the spectators in these cinema theatres. Thereafter, a series of orders were issued by the Administration granting relaxations to the different licensees in compliance with the Delhi Cinematograph Rules, 1953. In accordance with these relaxations, different licensees were allowed to increase or change the number and arrangement of seats in their respective theatres as allowed by the orders of relaxation.

2. Subsequently, in C.W. No. 173 of 1979 and the connected writ petitions (Reported in Durga Chand Kaushish and Another Vs. Union of India and Others,), the licensees challenged the power of the Administration to regulate the rates at which tickets for the cinema shows were sold by these licensees. It was held by this Court that under the Act or the Rules framed thereunder the Government did not have the power to regulate the rates of admission in the cinema theatres. As a result of this decision, which was given on 15-5-1979, the licensees were free to fix such rates of admission to their cinema theatres as they thought fit without being constrained in doing so by any regulation on the part of the Government. While it was appreciated that the action of the Government in regulating the rates of admission was motivated by concern for the common man who should be able to recreate and educate himself by being made able to see the films exhibited in the cinema theatres, the power to regulate the rates was not contained in the Act and the Rules and, therefore, the power had to be negated even though the consequences were such that the rates were enhanced by the licensees to the detriment of the public interest which always exists in the recreation and education of the common man living in a city like Delhi.

3-4. Since the main reason for the grant of relaxation to the licensees had disappeared inasmuch as the licensees were now free to charge such rates of admission to their cinema theatres as they pleased and also because the licensees did take advantage of this freedom and did increase the rates of admission to their respective theatres, the Lt. Governor issued an order on the 27th July, 1979 by which he cancelled with immediate effect five notifications dated 30-9-1976, 24-11-1977, 22-7-1977, 28-12-1977 and 29-3-1978 by which relaxations had been granted to the different licensees who were thereby allowed to increase the number of seats in their theatres.

The present writ petitions are filed challenging the validity of the notification dated 27th July, 1979. The writ petitions were resisted by the Delhi Administration. Shri R.S. Narula, learned counsel for the petitioner, has given us the benefit of thoroughly studying the pleadings of the petitioners and of the respondents and summarising the contentions of the petitioners in the form of a series of propositions to show why the impugned, notification was illegal and why

it deserves to be quashed by this Court. We may further summarise these propositions in the light of the oral arguments addressed by him. It appears to us that the main grounds of attack on the validity of the notification are as follows:?

1. The power to grant the relaxations is contained in the proviso to sub-rule (3) to Rule 3 of the Rules. The proviso runs as under:?

Provided that the provisions of paragraphs 1 (1), (2) and (3), 4, 8 (1), 9, 10 (3), (4) and (5), 13 (2), and (3), 18 (1), 19 and 29 in the First Schedule may be relaxed by the Chief Commissioner in any particular case to such extent and subject to such conditions as the Chief Commissioner may think fit.

On a correct construction of the proviso, it would appear that the power of relaxation is to be exercised once for all and that it is not contemplated that a relaxation once granted may thereafter be withdrawn either wholly or partly. Further, the relaxation was granted not only because the petitioner represented that the 10% cut made in the rates of admission to the cinema theatres in 1975 was causing loss to the licensees but also after consulting the Chief Fire Officer and the Municipal authorities who agreed to the relaxations keeping in mind the considerations of fire hazard and of health. Only such relaxation was granted as could be granted after keeping in view the fire and the health considerations. The change in the position since then is only that the rates of admission to the cinema theatres can now be increased without any limitation by the licensees. But the compliance with the requirements of fire hazard and health has not changed and, therefore, there is no reason why the relaxation once granted should be withdrawn.

2. Sections 14 and 21 of the General Clauses Act which prima facie would appear to authorise the Administration to exercise the power from time to time and to modify, vary or rescind the relaxation once granted under the proviso to R. 3 (3) are only rules of interpretation and do not mean that in every case a notification or order issued by the Administration can be varied or rescinded As pointed out by the Supreme Court in *The State of Bihar Vs. D.N. Ganguly and Others*, of the judgment

Section 21 xx, xx, xx, embodies a rule of construction and the question whether or not it applies to the provisions of a particular statute would depend on the subject matter, context, and the effect, of the relevant provisions of the said statute. In other words, it would be necessary to examine carefully the scheme of the Act, its object and all its relevant and material provisions before deciding whether by the application of the rule of construction enunciated by Section 21 xx, xx, xx, can be said to vest in the appropriate Government by necessary implication.

The decision of the Bombay High Court in *Nava Samaj Limited and Another Vs. The Registrar of Companies and Another*, was also cited by Shri Narula as an instance of a statutory provision under which action was not revocable in spite of Section 21.

3. Even if it is assumed that the relaxations can be withdrawn by the Government because the licensees are now free to charge such rates of admission as they please and because the main reason for the relaxation was to compensate the licensees for the loss caused to them by the reduction in the rates of admission since the fire and the health considerations were also satisfied before granting the relaxations, withdrawal of relaxation must not result in the automatic cancellation of all or any of the additional seats which were installed in the cinema houses by the petitioners. The result should be that the Act and the Rules apply to the exhibition of films by the licensees in their theatres without the licensees having the benefit of relaxation. Such of the additional seats which comply substantially with the requirements of the Rules must be allowed to stay and it is only those seats which infringe upon the Rules which may have to be ordered to be removed by the Administration.

4. The Administration will have to bear in mind the distinction between the licences which used to be granted to the cinema theatres prior to the promulgation of the 1953 Rules and those granted after the promulgation of these Rules. Under Rule 3 (2) an annual licence shall only be granted in respect of a building which is permanently equipped for cinematograph exhibitions and in respect of which the requirements set forth in the First Schedule to these Rules are fulfilled. It shall be valid for one year from the date of issue and shall be renewable on the application of the licensee. But Rule 3 (3) says that?

Notwithstanding anything in the preceding sub-rule, an annual licence may be granted or renewed in respect of a building already licensed for cinematograph exhibitions. The cinema houses which come into existence after the issue of these rules, may be licensed only if all the provisions of the rules set forth in the First Schedule are complied with.

The authorities will also be guided by Sections 12 (1) (a) and 17 of the Act. Section 12 (1) (a) of the Act is that the licensing authority shall not grant a licence under Part III of the Act unless it is satisfied that the Rules made under Part III of the Act have been substantially complied with. Section 17 of the Act gives the Central Government the power to exempt subject to such conditions and restrictions as it may impose, to any cinematograph exhibitions or class of cinematograph exhibitions from any of the provisions of this part or of any Rules made thereunder. Section 17 may be attracted in so far as the Lt. Governor under Article 239 of the Constitution is acting on behalf of the President of India in the Union Territory of Delhi and by virtue of any delegation that may have been made by the President in favour of the Administrator of Delhi to issue rules under the Act.

5. Certain minor objections were also raised, such as, no hearing was given to the petitioners to show cause against the withdrawal of relaxations before these relaxations were withdrawn and no reasons were given for the withdrawal of the relaxations and that the relaxations should not have been withdrawn during the running of the annual licences before the completion of the period of the licences.

5. We may now consider each of the above propositions:

6. Propositions Nos. 1 and 2: The power of relaxation is of a general nature. The proviso to Rule 3 (3) is an enabling provision. The exercise of the power of relaxation thereunder depends on numerous factors which may be taken into account for granting relaxation in a particular case. All these factors cannot be exhaustively enumerated nor can they be of the same nature. They may be so different from each other that they cannot fall all into one class. Whether, therefore, the relaxation in a particular case is permanent and irrevocable or is of such a nature that it is likely to be varied or rescinded if the circumstances motivating the grant of relaxation are subsequently changed depends on the facts of each case in which the relaxation is granted. The decision of the Supreme Court referred to above was concerned with the reference of an industrial dispute to a tribunal u/s 10 of the Industrial Disputes Act, 1947. Such a reference by its very nature is final and the power is exhausted by making a reference in the particular case. This was why the power in respect of the same case could not be exercised again nor could be varied or rescinded.

The same reason explains the decision of the Bombay High Court regarding the interpretation of the power exercisable under sub-section (4) of Section 89 of the Companies Act, 1956. The Act and the Rules made thereunder are applicable to buildings in which films are exhibited and the arrangement of seats in those buildings. Since the construction of buildings, modifications in these constructions and also arrangement of seats and modifications of these arrangements involve considerable expenditure, Section 12 (1) (a) of the Act emphasises the necessity that the compliance with the statutory requirements by the licensees should be only substantial so that inflexibility or rigidity does not cause more harm than the protection of the public which is the object of the conditions under which licenses are granted.

7. We are of the view that the principal reason why the relaxations are granted by the notifications issued from 1976 to 1978 was the necessity of compensating the licensees for the loss caused to them by the 10% cuts in their rates of admission to their theatres which were imposed on them in 1975, in addition to the fact that the rates of admission had already been kept low by the purported exercise of the power to do so by the Administration acting under the Act and the Rules. It is only because the Administration was convinced that hardship was being caused to the licensees and that it would be unfair to make them run the cinema theatres at a loss or with too little profit to be worthwhile that the Administration consented to relax the provisions of certain Rules so that the loss may be compensated by the installation of additional seats in the cinema theatres of the licensees.

8. It is true that the Administration could not have granted the relaxations if such relaxations would have contravened the Rules to such an extent as to increase the risk of fire hazard or to expose the spectators to unhealthy conditions from the public health viewpoint. Therefore, the advice of the Fire and Health

authorities had to be taken before relaxations could at all be granted. We have seen at page 224 of the Paper Book the report of the Chief Fire Officer. A perusal of this report shows that he was very reluctant to advise the making of relaxation in the Rules if the safety of the visitors to the theatres would be affected thereby. He has rightly observed as follows:?

Even under the normal circumstances, the exit facilities are seriously hampered by people rushing and it is felt that in case of panicky situation of a minor nature, the people will be put to great difficulty which may even result in stampede. In the circumstances. I feel that it would not be advisable to allow extra seats required by the Managements. In a few theatres, however, the difficulty may not be so acute. If at all any relaxation has to be considered under unavoidable circumstances, our reaction to the proposals put forward by the management of a few cinema houses may kindly be seen in the enclosure.

The Chief Fire Officer then considers certain individual cinema theatres and gives his opinion regarding each of them. The Fire Officer has improved this report because he was made to understand that with a view to compensate the licensees for the economic loss caused to them by the restriction imposed on the rights of admission to the cinemas, some relaxation had to be made and some additional seat? had to be permitted to be installed in the cinema theatres. But for these "unavoidable circumstances" the question of relaxation might not have been considered at all and the Fire Officer also would not have advised freely that there was scope for the increase in the number of seats. However the very fact that the Fire Officer has agreed to the increase of seats in some of the cinemas would also show that he was prepared to take that risk in consonance with the compliance with the Rules. The Administration, the Public Health authorities and the Chief Fire Officer ultimately agreed to make some of these relaxations.

9. While the main consideration, namely, the loss that was going to be caused to the licensees has disappeared, it is always desirable to err on the safer side in respect of security against fire hazard and improvement in the public health conditions of the cinema theatres. It cannot be said, therefore, that if the Chief Fire Officer under the pressure of unavoidable circumstances once agreed advise relaxation and the Public Health authorities were also satisfied, these conditions cannot be reconsidered with a view to improve security against fire hazard and in public health after passage of some time. Since none of these three factors were such that they were not liable to change after the relaxation was once granted, it cannot be said that the proviso to Rule 3 (3) is capable of being interpreted in the way Section 10 of the Industrial Disputes Act or Section 89 (4) of the Companies Act were construed in the decisions cited by Mr. Narula.

On the contrary we may observe that the vast majority of decisions under Sections 14 and 21 of the General Clauses Act including some of the Supreme Court decisions have emphasized the essentially changeable nature of action taken under the provisions like the proviso to Rule 3 (3) of the Rules with which

we are concerned. The normal rule is that such action taken is liable to change in the light of subsequent events and such orders or notifications issued can be varied and rescinded in accordance with the subsequent changes. It is only exceptionally that such action taken is of such a permanent nature that it cannot be allowed to be changed at all. In our view, a fair reading of the proviso to Rule 3 (3) and the conditions under which action thereunder is to be taken would show that the relaxation granted to the petitioners was not of such a nature that it could not be withdrawn at all. As an ultimate consideration, we must point out that the petitioners have come to this Court under Article 226 of the Constitution and the extraordinary relief can be granted to them thereunder only to prevent injustice being done to them. Their conduct also should be such as to deserve an equitable relief. Since the main considerations underlying the grant of relaxation have now disappeared, it is difficult to agree with the petitioners that the Impugned order of cancellation was such as could not be passed by the Government under the proviso to Rule 3 (3) read with Sections 14 and 21 of the General Clauses Act. It may be that Sections 14 and 21 of the General Clauses Act do not till terms apply to subordinate legislation, but there is no reason why the rules of interpretation laid down therein for application to statutes should not be invoked for construction of statutory rules including the proviso to Rule 3 (3).

10. Our finding on propositions 1 and 2, therefore, is that the relaxations granted under the proviso to Rule 3 (3) are capable of being modified or revoked and in the circumstances of these cases the cancellations of the relaxations were justified and legal.

11. Proposition No. 3: It has been already made clear above that the relaxation was granted after considering the public health and the fire hazard aspects. It is also clear that the very fact that the relaxation could not be granted after bearing these main considerations in mind would show that there was some rule for the extension of the sitting accommodation in these theatres within the Rules, though the provision of some of the additional seats may perhaps have been to some extent contrary to some of the Rules. It is not necessary for us to speculate on this question. It is enough to say that the result of the cancellation of the relaxation is simply the withdrawal of the relaxation. It does not automatically mean that all the additional seats which were installed in the cinema theatres were contrary to the Rules and must, therefore, be dismantled without any consideration as to how many of these seats were in consonance with the Rules and how many of them were contrary to the Rules.

12. Our finding on proposition No. 3 is, therefore, that the Administration will apply their mind to the additional seats with a view to determine which of them have contravened which rules and to what extent. They will bear in mind that the compliance with the Rules is to be substantial and not rigid and inflexible.

13. With these guidelines furnished by the Act itself, they will determine which of the additional seats infringe upon the Rules and in respect of only such seats they will have the power to order removal of such seats.

14. Proposition No. 4: It is not disputed that some of the cinema theatres had existed prior to the promulgation of 1953 Rules. Advisedly, R. 3 (3) makes a distinction between these theatres and other theatres which have come into existence after the promulgation of these Rules. It would appear from the opening words of Rule 3 (3) that licences may be granted or reviewed in respect of pre-existing theatres which were already licensed prior to 1953 for cinematograph exhibition without their compliance with Rule 3 (2), This is the effect of the words "Notwithstanding anything in the preceding sub-rule" with which Rule 3 (3) begins. The preceding sub-rule is Rule 3 (2) which insists that the requirements set forth in the First Schedule of the Rules have to be fulfilled before a licence can be granted to a building which is permanently equipped for cinematograph exhibition. This distinction will surely be borne in mind by the Administration in dealing with these two kinds of buildings. This will also be in accordance with the requirement already set out in Sections 12 (1) (a) and 17 that the compliance with the Rules has to be substantial and not rigid or inflexible.

15. Proposition No. 5: The orders issued in exercise of the power conferred by the proviso to Rule 3 (3) in relaxing certain requirements of the Rules in respect of certain buildings exhibiting films are in the nature of orders or notifications made in the exercise of a statutory power. They are not ordinary administrative action much less quasi-judicial action. Just as the question of granting the hearing did not arise before the relaxation was granted, similarly the grant of hearing was not necessary before the relaxation was withdrawn. Even if it is assumed that the normal rule that hearing should be granted to a person before any action affecting his civil right is taken is to apply to the withdrawal of relaxation we are of the view that the licensees knew very well that all justification for continuing the relaxation had ceased to exist when the licensees were enabled to raise the rates of admission such as they liked. It would, therefore, have been a mere formality for hearing being granted to the licensees.

It could not be denied that the necessity for compensating the licensees for the loss caused to them had ceased to exist and, therefore, the licensees could not deny that the relaxations had become unjustifiable and, therefore, the licensees had no right to insist that the benefit of the relaxation must continue when the circumstances justifying the relaxation had ceased to exist. We further note that the Administration will be well advised in giving the hearing to the petitioners before the cancellation and ordering dismantling of any of the additional seats on the ground that they contravene the Rules. This would be necessary because the question as to how many of the additional seats substantially comply with the Rules and how many of them contravene the Rules is at present not determined and has to be determined by the Administration later.

16. The same observation would apply to the fact that reasons have not been given by the Administration in cancelling the relaxations granted to the licensees. For, the reasons are obvious and, at any rate, they have been given now in the

pleadings made in the writ petitions resisting the reliefs asked for by the petitioners. The withdrawal of relaxation cannot, therefore, be struck down merely because the reasons were not given in the order itself.

17. The main order has been passed during the currency of the licences. But this is inevitable. At any rate, in the light of the observations made above, the dismantling of the seats on the ground that they do not substantially comply with the Rules will be done in future after the Administration apply their mind to the question. It cannot be expected as to exactly when this would occur. It is not, therefore, possible to ensure that any change in the sitting accommodation would be enforced by the Administration only at the end of any particular licensing period.

18. For the above reasons, the writ petitions are disposed of in the light of the findings given above and in the light of the observations as to the existing additional seats and as to the changes which may have to be made in them in future after the Administration examine the questions on merits and take steps. No costs.

19. Reading the determination by the Administration as to the substantial compliance with the Rules by the additional seats or such of them as may be singled out by the Administration in each of the buildings of the licensees, the interim order dated 2-8-1979 will continue in force subject to the limitation that if no determination is made in respect of each building within one month by the Administration, then those licensees in respect of whose buildings the determination is not made shall be free to sell tickets for the additional seats in their building.