
(1996) 05 GAU CK 0016
In the Gauhati High Court
Case No : Civil Rule No. 4656 of 1991

Kelvin Cinema and Others	Vs	APPELLANT
State of Assam and Another		RESPONDENT

Date of Decision : 16-05-1996

Acts Referred:

Assam Cinemas (Regulation) Act, 1953 — Section 10
Cinematograph Act, 1952 — Section 16
Constitution of India, 1950 — Article 14, 16, 19, 19(1), 19(2)(6)

Citation : AIR 1996 Guw 103

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : P.K. Goswami, D.K. Hazarika, B.P. Borah and A.C. Das, for the Appellant; S.N. Bhuyan, General, for the Respondent

Final Decision : Allowed

Judgement

J.N. Sarma, J.—This civil rule has been filed challenging the constitutional validity of schedule of conditions and restrictions of the Assam Cinema (Regulation) Rules, 1960 and the amendment made thereto as circulated vide notification dt. 6th November, 1991 and the subsequent Memo dated 14-11-1991 issued by the Joint Secretary, Govt. of Assam, General Administration Deptt. containing amendment of schedule of conditions and restrictions as communicated to all District Magistrates (L.A.) This is Annexure "C" to the writ application and that is quoted below :

"In exercise of the powers conferred by Section 10 of the Assam Cinema (Regn.) Act, 1953 (Assam Act XIV of 1953) the Governor of Assam is pleased to amend the Assam Cinema (Regn.) Rules, 1960, hereinafter referred to as the said rules, as follows, namely :--

1. Short title and commencement.-- (i) These rules may be called the Assam Cinema (Regn.) (Amendment) Rules, 1991;

(ii) They shall come into force with immediate effect.

2. Amendment of Schedule of Conditions and Restrictions.-- Item No. 20 of the Schedule of Conditions and Restrictions is herein substituted as follows :

"20. Not more than four shows shall be held at the place licensed between 3 p.m. and midnight on any week days.

Out side these hours i.e. before 3 p.m. or after midnight no show shall be allowed at the place licensed on any week days.

Provided that no films certified for public exhibition restricted to adults only shall be exhibited during the 3 p.m. shows on week days.

N.B.I. There will be no restriction on the number of shows in a day on Sunday and public holidays provided that no show shall be allowed after midnight."

2. There is an Act known as Assam Cinema (Regulation) ACT, 1953 and the rules have been framed thereunder being Assam Cinema (Regulation) Rules, 1960 (hereinafter called the Act and the Rules for the sake of brevity). Under that Act licenses are granted by the District Magistrate of the Districts who is the licensing authority u/s 4 of the Act. u/s 5 of the Act some restrictions are imposed on the power of the licensing authority which inter alia includes for issuance of direction by the State Government to the licencees for the purpose of regulating the exhibition of any film or class of films etc. u/s 6, the State Government as well as the licencing authority have been empowered to direct the licensee not to exhibit certain films and Section 7 of the Act prescribes penalties for contravention of the Act. That apart u/s 8 of the Act the licensing authority is empowered to revoke or suspend a licence in the event of any contravention by the holder of the licence of any of the provisions of the Act and Rules made thereunder or for contravention any restriction or conditions mentioned in the licence. Section 9 of the Act provides for appeal and reviews on the decisions of the licensing authority and such appeals or revisions lie to the State Government. Section 10 of the Act confers power to make Rules which inter alia includes the procedure in accordance with which a licence may be obtained and the terms, conditions and restrictions if any, subject to which a licence may be granted under the Act. Under the said section, the Rule making authority is to make Rules for "the Regulation of the Cinematograph exhibition for securing public safety".

3. In exercise of powers conferred by Section 10 of the Act, Governor of Assam made some Rules for the purpose of carrying into effect the provisions of the Act, and accordingly Rules of 1960 were made. In the said Rules of 1960 there is a schedule titled as "Schedule of Conditions and Restrictions".

Under the schedule there are altogether 32 conditions with a clause at 33 to the effect that "the licensee shall comply with such other conditions as may be prescribed from time to time by rules". Condition No. 20 of the said Schedule (Rules 1960 before amendment) provides for the number of shows to be held in week days. The condition 20 is quoted below :

"20. Not more than 3 shows shall be held, at the place licenced between 2.00 p.m. and midnight on any week days.

Outside these hours, i.e., before 2.00 p.m. or after midnight no show shall be allowed at the place licenced on any week days except with the previous permission of the licensing authority obtained in writing at least 7 days in advance;

Provided that no films certified for public exhibition restricted to adults only shall be exhibited during the matinee shows on week days.

N.B. There will be no restriction on the number of shows in a day on Sundays and public holidays provided that no shows shall be allowed after midnight."

4. In accordance with rules with effect from 1-2-78, it is stated in para 8 of the writ application that the petitioners were permitted to exhibit noon shows from 11.30 a.m. at usual rates in addition to their normal shows. The said show was introduced for patronising films on regional language as while granting the said permission, direction was issued to give preference to exhibit films on regional language. Thereafter, it is stated in paragraph 9 of the writ application that in the year 1984 some restrictions were imposed in exhibiting noon shows and the said restrictions were for temporary period and the same restrictions were lifted in the later part of the same year. Thereafter, noon shows were closed from the early part of 1986 to the end of July, 1989. Thereafter on 3-7-89 Annexure-A was issued which reads as follows :

"ORDER

As per Govt. letter No. 14/88/Pt/28 dated 28th June, 1989, the restriction imposed in exhibition of noon shows in the cinema halls in Kamrup District is hereby withdrawn with immediate effect.

Consequent upon this withdrawal all cinema halls within Kamrup District are allowed to exhibit cinema in noon shows as per Item No. 20 of the Schedule of Conditions and Restrictions attached to the licence issued under Assam Cinema (Regulation) Rules, 1960."

5. It is stated in paragraph 11 of the writ application that due to the prevailing situation in Assam the audience in the cinema halls are very thin in the evening and night shows and the petitioners have to maintain the business from hand to mouth only from the earning of noon shows and matinee shows. Thereafter, an amendment as quoted above came into force. By this amendment as will be seen, the authority increased the number of shows from 3 to 4 and on the other hand reduced the hour of exhibition of the said four shows from 3.00 p.m. to midnight (earlier it was from 2 p.m. to midnight). Further the power of the authority to accord permission if applied in writing for exhibition of shows before 2.00 p.m. and after midnight has also been deleted and it is the legality and validity of this amendment which is challenged in this writ application.

6. I have heard Sri P. K. Goswami, learned Advocate for the petitioners and Sri Section N. Bhuyan, learned Advocate General for the State of Assam for the respondents. No-affidavit-in opposition has been filed but the record has been produced. Sri Goswami urges the following points :

i) That the restrictions put are unreasonable restrictions and violative of Article 19(1)(g) of India.

ii) That the restrictions put 30 years ago for exhibiting daily cinemas in the cinema house has become inconsistent with the growth of the society and as such the restrictions are liable to be removed from the said Rules.

iii) That allowing exhibition of 4 shows between 3 p.m. and midnight is unreasonable and unfair inasmuch as it is not reasonably practical to hold 4 shows within a period of 9 hours.

(iv) Increasing number of shows and decreasing the duration is indirect restriction on exhibition of shows as minimum 2.45 hours are taken in exhibiting the Cinema shows. Along with this the petitioners are required to exhibit the number of films and slides as directed by the State Government and therefore no show can be completed in a duration of less than 3 (three) hours

(v) The impugned amendment indirectly is coercive measure to reduce the number of shows in the cinema houses and this is unreasonable restriction puts restriction in carrying out the rightful business by the petitioners.

(vi) Restrictions imposed regarding public exhibition of adult film during 3 p.m. shows on week days is unreasonable.

7. The petitioner has provided a chart regarding the conditions prevalent in some other States and that is quoted below:

"Time limit in exhibiting Cinema

State Rules Time

1. Andhra Pradesh A.P. Cinema (Regulation) Rules, 1970 Not before 8.30 A.M. or after. 1.30 A.M.

2. Gujarat Gujarat Cinema (Regulation) Rules, 1954. Shall not continue after 1 A.M.

3. Karnataka Karnataka Cinema (Regulation) Rules, 1971 Shall continue after such time not later then 1 A.M.

4. kerala Kerala Cinemas (Regulation) Rules, 1988 Licence Premises shall not be kept open after 2 A.M. on any day without obtaining special permission.

5. Madhya Pradesh M.P. Cinemas (Regulation) Rules, 1972. Shall not continue after 12.30 A.M.

6. Rajasthan Rajasthan Cinemas (Regulation) Rules, 1957. 1.30 A.M.

7. Tamil-Nadu Tamil Nadu Cinema (Regulation) Rules, 1957. Not earlier than 12 Midnight and not later than 1.30 A.M.

8. West Bengal West Bengal Cinemas (Regulation) of Public Exhibition Rules, 1956. Three shows between 2 P.M. and Midnight."

8. In interpreting a statute or a rule we must bear in mind that legislature does not intend what is inconvenient and unreasonable. If a rule leads to an absurdity or manifest injustice from any adherence to it, the court can step in. A statute or a rule usually should be most agreeable to convenience, reason and should do justice to all. The approach of Bentham regarding law is to deliver the maximum benefit/utility to the people with minimum amount of friction/inconvenience to others. A law/rule should not be made without a purpose or object and when it is found so it is to be struck down, further when it is found that the object is illusory and appears to be nothing but a shadow hunting process that law is bad as it does not serve any purpose of the society in general. A law/rule should be beneficial in the sense that it should suppress the mischief and advance the remedy. In interpreting a law/rule it is legitimate to take into consideration the reasonableness or unreasonableness of any provision. Gross absurdity must always be avoided in a statute/rule. No doubt in *Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India (UOI) and Others*, Krishna Iyer, J. observed: "To sustain a law by interpretation is the rule. To be trigger happy in shooting at sight every suspect law is judicial legicide."

Law must be interpreted for promoting public good and to interdict power misuse.

9. The expression reasonable means rational, according to dictate of reason and not excessive or immoderate. If something is not per se preposterous or absurd, it must be held to be reasonable. The Supreme Court in *Gujarat Water Supply and Sewerage Board Vs. Unique Erectors (Gujarat) (P) Ltd. and Another, (P)* pointed out "It is difficult to give an exact definition of the word reasonable The word reasonable has in law prima facie meaning of reasonable in regard to those circumstances of which the actor called upon to act reasonably knows or ought to know."

10. In 1982 SCC 30: AIR 1981 SC 2138 (*R.K. Garg v. Union of India*) the Court pointed out "The action is called reasonable which an informed, intelligent, just minded, Civilized man could rationally favour. The concept of reasonableness does not exclude notions of morality and ethics. In the circumstances of a given case considerations of morality and ethics may have a bearing on the reasonableness of the law in question." Every law/rule must be subordinate to primordial necessity of order in human life. Reasonable restriction imposed on person for enjoyment of right should not be arbitrary or of an excessive nature beyond what is required in the interest of public. Reasonableness of restriction depends upon nature of right claimed, object to be achieved, means employed and limitation imposed. The Supreme Court in a number of cases point out that reasonable restriction in Article 19(1)(g) of the Constitution means that the

limitation should not be arbitrary or of an excessive nature, beyond what is required in the interest of public. The word reasonable implies intelligent, care and deliberation, that is, a course which reason dictates (See Chintaman Rao Vs. The State of Madhya Pradesh, Bishambhar Dayal Chandra Mohan and Others Vs. State of Uttar Pradesh and Others, (P.P. Enterprises and Others Vs. Union of India (UOI) and Others, one must strike a balance between individual liberty and social control by bearing in mind the principle that courts should not make an approach which will be a body blow to the fibre of the society.

11. It is in that background that I am approaching the matter. From perusal of materials and considering the matter it is found as follows:

(i) The Cinema industry is facing a crisis because of video and cassettes and the restrictions put will almost be a death blow to the industry, which is not permissible.

(ii) The exhibition of 4 shows between 3 P.M. and midnight is not reasonably practicable as detailed in paras 13, 14 and 15 of the writ application. Fixing of this limit is unreasonable and the petitioners have suffered because of impractical approach of authority. One cannot be expected to do something which is impossible.

(iii) The purpose of the amendment as indicated earlier is for the benefit/or preventing students from going to Cinema without attending course of study or preventing teenager from going to adult cinema. But for that why the authority should decide to use the stick against the Cinema being oblivious of other avenues (like video, cassette) available for that purpose, Cinema halls cannot be considered to be the source of all evils. By attempting to plug an alleged loophole the authority seems to forget that there are other loopholes through which one can have an exit. Others, like parents, guardians, the educational authority have a role to play to prevent the mischief, allowing others to have a deep slumber the authority cannot attempt to chasten the Cinema Halls, that does not encourage public good, it will be a mere shadow fighting and it cannot drive away the ghost, which is the purpose behind this amendments. The ghost will dance and have a hay day.

(iv) The amendment did not take into account the pattern throughout the country.

12. Shri Goswami, Learned Advocate for the petitioner in support of his contention places reliance in two decisions

(i) R.M. Seshadri Vs. The District Magistrate, Tanjore and Another, wherein the facts are as follows:

The appellant before the Supreme Court was a owner of a Cinema theatre in Tanjore District, and held a licence from the District Magistrate, The owner objected to certain conditions in the licence imposed by the authority. The conditions which were impugned are quoted below:

"4(a). The licensee shall exhibit at each performance one or more approved films of such length and for such length of time, as the Provincial Government or the Central Government, may, by general or special order, direct.

(b) The licensee shall comply with such directions as the Provincial Government may by general or special order give as to the manner in which approved films shall be exhibited in the course of any performance."

Explanation: "Approved Films" means a cinematograph film approved for the purpose of this condition by the Provincial Government or the Central Government.

Special Condition 3.: The licensee should exhibit at commencement of each performance not less than 2,000 feet of one or more approved films."

13. The question which arose before the Supreme Court was whether the impugned conditions amount to reasonable restriction within the meaning of the Act. The Supreme Court pointed out as follows:

(a) As the condition stands, there can be no doubt that there is no principle to guide the licensing authority and a condition such as the above may lead to the loss or total extinction of the business itself. A condition couched in such wide language is bound to operate harshly upon the cinema business and cannot be regarded as a reasonable restriction. It savours more of the nature of an imposition than a restriction. It is significant that the condition does not profess to lay down that the approved films must be of an educational or institutional character for the purpose of social or public welfare. We think, therefore, that condition 4(a) as it stands at present amounts to an unreasonable restriction on the right of the licensee to carry on his business and must be declared void as against the fundamental right of the appellant under Article 19(1)(g).

(b) We accordingly allow the appeal and hold that condition 4(a) and special condition 3 expressed as they are at present are void and have no legal effect as against the fundamental right of the appellant under Article 19(1)(g)."

14. The other case relied on by Sri Goswami is M.J. Sivani and Others Vs. State of Karnataka and Others, That was a case regarding Video Games and there in paragraphs 18, 19 and 20 the Supreme Court pointed out as follows at page 1775; of AIR:

Paragraph 18:

"The question then emerges whether regulation of video games violates the fundamental right to trade or business or avocation of the appellants guaranteed under Articles 19(1)(g) and 21. It is true that they have fundamental right to trade or business or avocation but it is subject to control by Article 19(6) which empowers to impose by law reasonable restrictions on the exercise of the right in general public interest. In applying the test of reasonableness the broad criterion is whether the law strikes a proper balance between social control on the one

hand and the right of the individual on the other hand. The court must take into account factors like nature of the right enshrined, underlying purpose of the restriction imposed, evil sought to be remedied by the law, its extent and urgency, how far the restriction is or is not proportionate to the evil sought to be remedied by the law, its extent and urgency, how far the restriction is or is not proportionate to the evil and the prevailing conditions at that time, the Court cannot proceed on general notion of what is reasonable in the abstract or even on a consideration of what is reasonable from the point of view of the person or a class of persons on whom the restriction, regard must be had, as stated earlier, to the nature of the business and the prevailing conditions in that trade or business which would differ from trade to trade. No hard and fast rules concerning all trades etc. could be laid. The State, with a view to prohibit illegal or immoral trade or business injurious to the public health or welfare, is empowered to regulate the trade or business injurious to the public health or welfare, is empowered to regulate the trade or business appropriate to the conditions prevailing in the trade/ business. The nature of the business and its indelible effect on public interest etc. therefore, are important element in deciding the reasonableness of the restriction. No one has inherent right to carry on a business which is injurious to public interest. Trade or business attended with danger to the community may be totally prohibited or be permitted subject to such conditions or restrictions as would prevent the evils to the utmost."

Paragraph 19:

"The licensing authority, therefore, is conferred with discretion to impose such restrictions by notification or order having statutory force or conditions emanating therefrom as part thereof as are deemed appropriate to the trade or business or avocation by a licence or permit, as the case may be. Unregulated video game operations not only pose a danger to public peace and order and safety, but the public will fall a prey to gaming where they always stand to lose in playing the games of chance. Unless one resorts to gaming regularly, one can hardly be reckoned to possess skill to play the video game. Therefore, when it is a game of pure chance or manipulated by tampering with the machines to make it a game of chance, even acquired skills hardly assist a player to get extra tokens. Therefore, even when it is a game of mixed skill and chance it would be a gaming prohibited under the statute except by regulation. The restriction imposed, therefore, cannot be said to be arbitrary, unbridled or uncanalised. The guidance for exercising the discretion need not ex facie be found in the notification or orders. It could be gathered from the provisions of the Act or Rules and a total consideration of the relevant provisions in the notification or order or conditions of the licence. The discretion conferred on the licensing authority, the Commissioner or the District Magistrate, cannot be said to be arbitrary, uncanalised or without any guidelines. The regulations, therefore, are imposed in the public interest and the right under Article 19(1)(g) is not violated."

Paragraph 20:

"It is true that the owner or person in charge of the video game earns livelihood assured under Article 21 of the Constitution but no one has the right to play with the credulity of the general public or the career of the young and impressionable age school or college going children by operating unregulated video games. If its exhibition is found obnoxious or injurious to public welfare, it would be permissible to impose total prohibition under Article 19(6) of the Constitution. Right to life under Article 19 does protect livelihood, but its deprivation cannot be extended too far or projected or stretched to the avocation, business or trade injurious to public interest or has insidious effect on public morale or public order. Therefore, regulation of video games or prohibition of some video games of pure chance or mixed chance and skill are not violative of Article 21 nor is the procedure unreasonable, unfair or unjust."

15. On the background of this law now let us have a look at the contentions to be forwarded by Sri Goswami. First let us come to proviso to Rule 20 of the unamended rules. It provides that no films certified for public exhibition restricted to adults only shall be exhibited during the matinee shows on week days. The purpose behind it was not to allow the students to attend the cinema.

16. There was also a memorandum from All Guwahati Students Union (AGSU) for discontinuation of exhibition of films from noon-shows and morning shows. The Finance Department objected to this with the remarks that in the interest of State Revenue, noon-shows should continue particularly because the evening shows are becoming unpopular in the context of prevailing law and order situation. This also had the approval of the Chief Minister. Thereafter, the political departments has requested for discontinuation of the noon-shows and morning shows due to students community. The matter was referred to legal remembrance and judicial department communicated on 2-4-91 requesting prohibition of such shows. So, the obvious purpose was to prevent the student community from attending such shows. But it is not understood as to why any films certified for public exhibition restricting to adults only cannot be exhibited during 3 p.m. shows on week days. It cannot be assumed that all the adults are working people and even working people may manage time for such show. So, this restriction appears to be unreasonable and coercive and it appears to be unreasonable restriction and this exercise was not in the general public interest. It appears that this amendment did not strike a proper balance between the social control on the one hand and the right of individual on the other hand. This restriction sought to prevent an evil but this evil cannot be protected by the amendment and it is also not proportionate to the evil and prevailing condition at that time. As indicated above, this industry has already suffered because of the prevailing law and order situation and from the daily show chart annexed it appeared that there was no adequate attendance in the first-show and night show and even for their right to have a noon-show are also curtailed, this will have a bad effect killing the industry. That cannot be the purpose of the amendment. Further, now a days one can take the judicial notice that there are Video Parlours and the opportunity to have a film through cassettes So, the

purpose sought to be achieved cannot be achieved by this amendment.

17. Therefore, I find that the discretion exercised by the authority is not an appropriate to the trade or business. It also cannot be said that this restriction will curb the danger to public peace or safety. There is no necessity and/or urgency to curb the exhibition of adult films in the show as the purpose sought to be achieved cannot be achieved by the amendment.

18. Accordingly, I hold that the proviso to condition 20 in the amended rules restricting that no film certified for public exhibition restricted to adults only shall be exhibited during 3 p.m. shows on week days shall be struck down holding it to be unreasonable and violative of Article 19(1)(g) of the Constitution of India.

19. The next question is that whether it is possible to hold four shows between 3 p.m. and Midnight on any week days. As indicated above it is not possible to hold four shows within this period. Accordingly, this part of the Rule also has to be struck down being unreasonable and impracticable. The effect of it will be to curb the number of shows, and accordingly the earlier provision allowing exhibition of films between 2 p.m. and Midnight on week days shall continue.

20. Already a stay order was passed by this Court and in terms of that stay order, the cinema halls are continuing to show the films as earlier. Further, I find that this Rule is against the all India pattern as quoted above in the earlier part of the judgment. In Andhra Pradesh the exhibition is allowed from 8.30 a.m. to 1.30 a.m. without any restriction. In Gujarat the exhibition is allowed up to 1 a.m. In Karnataka it is allowed up to 1 a.m. In Kerala it is allowed up to 2 a.m. In Madhya Pradesh it is allowed up to 12.30 a.m. In Rajasthan it is allowed up to 1.30 a.m. In Tamil Nadu it is allowed up to 1.30 a.m. In West Bengal now five shows are allowed.

21. So, I find that the amended Rule which has been framed by the State of Assam is violative of Article 19(1)(g) of the Constitution of India. Accordingly, it is not reasonable and that part of the Rules which provided for four shows between 3 p.m. and mid-night on week days is struck down. The cinema halls shall be allowed to have four shows from an appropriate time but this must be clear that no show should be allowed after midnight, either on week days or on holiday or Sunday.

22. The writ application is accordingly allowed holding that the restriction as indicated above under condition No. 20 of the Schedule of Assam Cinemas (Regulation) Rules, 1960 as amended quoted above shall be deemed to be illegal and void.

23. This disposes of the writ application.