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(2003) 01 PAT CK 0008

In the Patna High Court

Case No : C.W.J.C. No. 11551 of 2002

M/s Amrapali Cinema — APPELLANT

Vs

State of Bihar and Others — RESPONDENT

Date of Decision : 15-01-2003

Acts Referred:
Constitution of India, 1950 — Article 19(1)(g)

Citation : (2003) 1 PLJR 472

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Navin Sinha and Rajesh Kr. Verma, for the Appellant; Mahesh Prasad and Dhirendra Kumar for the State, for the Respondent

Final Decision : Allowed

Judgement

Aftab Alam, J.—The petitioner Gopal Kumar Bhartia runs a Cinema under the name of M/s Amrapali Cinema at Danapur. The licence for running the cinema was granted in the year 1975 with a sitting capacity of 902 persons. According to the petitioner the number of viewers coming to the cinema has sharply declined and he, therefore, made an application before the licensing authority, the Collector, Patna (Annexure-1) for reducing the number of seats to 624. As no action was taken on his application, the petitioner came to this court in C.W.J.C. No. 4426 of 2002 seeking appropriate direction to the licensing authority. This petition was disposed of by order, dated 5.7.2002 asking the licensing authority to pass an order on the petitioner''s request, if need be, after getting the cinema-hall inspected on several days consecutively.

2. Following the order passed by this court the Collector, Patna got the Cinema-hall of the petitioner inspected by the Executive Magistrate, Danapur on several dates and on the basis of the inspection report submitted by him passed an order under his memo no. 4532 dated 5.9.2002 (Annexure-5) rejecting the petitioner''s request for reduction in the number of seats. This writ petition has been filed challenging the order, dated 25.9.2002 passed by the Collector.

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3. In the impugned order the Collector enumerated the findings of the inspection report which led to the decision not to allow any reduction in the number of seats in the Cinema-hall. The findings which were taken took note of by the Collector are as follows :

(a) The management of the Cinema did not pay proper attention to cleanliness; there was foul smell and garbage in the Cinema; there was no proper arrangement of lighting in the hall and a single bulb was lighted in the verandah of the first floor.

(b) No air-conditioner or air-cooler was operational in the Cinema hall.

(c) Very little attention was paid to proper advertisement of the film being shown.

(d) The film being shown in the Cinema was a flop film and that was the main reason for the low number of audience. If films that were hit on the box office were shown the number of viewers was bound to increase.

(e) In the morning and evening shows a inferior film like ''Maine Dil Tujhko Diya'' was shown purposely.

(f) The number of viewers was small due to tack of basic facilities.

(g) The total receipt from the sale of tickets from August 22 to 28, 2002 was Rs. 73,665/-. During this period the management paid to the government a sum of Rs. 21,005/- as entertainment tax on the basis of compounding. Thus in those seven days the Cinema had earned a profit of Rs. 52,660/-.

4. On the basis of the above findings/reasoning''s the Collector concluded that the proprietor had made a profit notwithstanding showing a flop film and the request for reduction in the number of seats was made with the intent and object of cheating in regard to the government revenue (i.e., entertainment tax). Hence, he rejected the request for reduction in the number of seats.

5. On hearing Mr. Navin Sinha, learned counsel for the petitioner and Mr. Mahesh Prasad, G.P. 3 representing the State, it plainly appears to me that the Collector has acted quite erroneously and beyond his power as Licensing authority under the Bihar Cinemas (Regulation) Act, 1954 and the Bihar Cinemas (Regulation) Rules, 1974, framed under the Act. The findings recorded and the reasons assigned by him for refusing the petitioner''s request are not germane to the issue of reduction of number seats and the Collector''s decision therefore suffers from material irregularity.

6. it may be noted here that there is no separate or specific provisions either in the Act or in the Rules with regard to the number of seats permissible in a Cinema-hall. The Act and the Rules deal with the question of number of seats only in an oblique way. Section 5 provides that the licensing authority would not grant a licence under the Act unless he was satisfied that (a) the rules under the Act were substantially complied with and (b) adequate precaution had been taken in the place in respect of which the licence was given to provide safety to

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the persons attending exhibition therein. In the Act there is no more on the question of the number of seats in the Cinema-hall. Then comes the Bihar Cinemas (Regulation) Rules, 1974, rule 17 of which deals with the general suitability of the building; Sub rules 4 to 6 of Rule 17 which are relevant for the present are as follows :

"(4) There shall be annexed to the licence.

(i) a plan of the auditorium showing the dimensions of the gangways, the number and situation of the exits, the number of persons, which may be accommodated in each portion of the auditorium; and

(ii) a single line wiring diagram showing details of the entire electrical installation from the point of supply to the last light and fan.

(5) The licensee shall not, during the currency of the licence, make any alteration or addition in the auditorium except with the consent in writing of the licensing authority.

(6) No person in excess of the number specified in the licence shall be admitted into any portion of the auditorium nor shall any member of the audience be allowed to sit or stand in any of the gangways during the performance. All seats in the auditorium shall be serially numbered and where seating accommodation is provided on benches, there shall be set apart for such number of the audience a seating space of not less than twenty inches measured on straight lines along and at right angles to the front of such seat. Line demarcating each seat on a bench shall be pointed twenty inches apart."

7. No other provision either in the Act or in the Rules was brought to my notice that might have any bearing, direct or indirect, on the issue of sitting capacity in the Cinema hall.

8. Viewed in the background of the statutory provisions as indicated above the order passed by the Licensing authority, the Collector would immediately appear to be wholly untenable. The findings/grounds mentioned at (a) and (b) in the impugned order relate to general cleanliness and lack of air conditioning and air cooling in the Cinema. These grounds have no bearing on the issue of reduction in the number of seats. In case the state of cleanliness in the Cinema or the absence of air-conditioner/air-cooler violated any term(s) of the licence, it might be open to the Collector to take appropriate action, including the cancellation of the licence, provided the rules so permitted.

9. The findings/grounds stated at (c), (d), (e) and (f) in the impugned order relate to the business policy of the owner of the Cinema and the licensing authority cannot usurp the managerial function and put himself in a position to lay down the business policy of the Cinema while considering the request for reduction in the number of seats. To say that the number of viewers was bound to increase if films that were hit on the box office were shown is neither here nor there. The Collector seems to overlook that films that are hit on the box office

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are bound to cost a lot and the financial position of the petitioner may not allow him to get those films. Moreover, what films the Cinema would exhibit cannot be dictated by the licensing authority as long as the films shown do not violate any statutory provisions e.g. the provisions of the Indecent Representation of Women (Prohibition) Act, 1986 etc.

10. It is thus to be seen that the findings and grounds as stated at (a) to (f) in the impugned order were not at all germane to the issue.

11. Coming next to the ground mentioned at (g) in the impugned order, it is evident that the Collector has taken an over-simplistic view of the matter. The amount of entertainment tax has been deducted from the total receipt from the sale of tickets and the balance is described as the profit earned by the petitioner. This simple minded calculation does not take into account a number of other expenses which the Cinema is bound to incur, such as (i) the payment to the distributor/producer for showing their film, (ii) the electricity bills which would not be inconsiderable, (iii) the municipal taxes and rates for the Cinema building (iv) the payment of salary/ remuneration to the staff etc. If these expenses and other over-heads are accounted for the position of profit would not be as sanguine as presented by the Collector.

12. At this point I may refer to one fact from the inspection report of which the Collector has not taken note of in his order. This is the actual occupancy rate in the Cinema-hall from August 22 to 28, 2002. From the inspection note it appears that on August 22 occupancy in the Cinema-hall was highest at 77.9% and on 22.8.2002 it was the lowest at 16.72%. It is thus evident that a large number of seats in the Cinema hall in fact remained vacant and under the formula of compounding of the entertainment tax, the petitioner is liable to pay taxes even on seats remaining vacant.

13. It is the case of the petitioner that in recent years with the advent of V.C.R., Cable T.V. and other means of entertainment, the number of viewers coming to Cinema shows has greatly gone down. As a result a number of seats in the hall remain vacant.

14. In the changed circumstance the petitioner wanted to reduce the number of seats so as not to pay taxes even on seats remaining vacant and thus to cut down his losses and/or increase his profits.

15. In this case there is no need to go into the question whether there has been any decline in the number of viewers in Cinema because in view of the statutory position as it exists at present there is nothing to interfere with the right of the Cinema owner to fix the number of seats as long as he complies with the provisions of sub-rules 4 to 6 of Rule 17 of the Rules. A Cinema owner cannot be prevented from reducing the number of seats on the grounds assigned by the Collector. And least of all on some vague apprehension that the object of reduction in the number of seats was to cheat the government of its revenue by way of entertainment tax.

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16. In this regard it may be pointed out that the provisions relating to the grant of licence for running a Cinema are contained in the Bihar Cinemas (Regulation) Act and the Rules framed thereunder. The provisions relating to levying tax on the sale of tickets in the Cinema are contained in the Bihar Entertainment Tax Act, 1948 and the Bihar Entertainment Tax Rules, 1984 framed under the Act. The Tax Act has its own set of specified authorities. The Licensing authority under the Bihar Cinemas (Regulation) Act, while considering the request for reduction in number of seats cannot assume the responsibilities and powers of the authorities under the Tax Act and the Rules. Moreover, under the Tax Act and the Rules the authorities are given sufficient powers to deal with any unauthorised and illegal evasion of entertainment tax, including the criminal prosecution of the owner of the Cinema. Therefore, any vague apprehension in the mind of the licensing authority that the request for reduction in number of seats was aimed at cheating the government of its revenue cannot be a ground for turning down the request.

17. It is to be borne in mind that a citizen takes up the business of running a Cinema in exercise of a fundamental right guaranteed under Article 19(1)(g) of the Constitution and the fact that for running the Cinema he has to pay taxe(s) to the government is merely incidental to the exercise of his fundamental right. The decision to reject the request for reduction in the number of seats on the ground of loss of government revenue would put this constitutional position upside down and it would mean that the object in running a cinema was to pay taxes to the government and the collection of revenue by the government would become the dominant object and the right of the individual citizen would become subservient to the collection of taxes by the government. To my mind this is the most fundamental flaw in the Collector''s order rejecting the petitioner''s request for reducing the number of seats.

18. For all these reasons, the impugned order appears to me to be completely untenable. It is accordingly set aside and the matter is remitted to the Collector to reconsider the matter in the light of the observations made in this judgment.

19. It is expected that a final order on the petitioner''s application will be passed within two weeks from the date of receipt/ production of a copy of this order in the office of the Collector, Patna. In the result, this writ petition is allowed but with no order as to costs.

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