
(1999) 08 AP CK 0129

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 21691 of 1995 and 30691 of 1998

Nataraj Theatre

APPELLANT

Vs

Govt. of Andhra Pradesh

RESPONDENT

Date of Decision : 26-08-1999

Acts Referred:

Andhra Pradesh Cinemas (Regulation) Act, 1955 — Section 11, 11(1), 2, 5(2), 5(3)
Andhra Pradesh Cinemas (Regulation) Rules, 1979 — Rule 10, 6
Andhra Pradesh Entertainment Tax Act, 1939 — Section 4
Constitution of India, 1950 — Article 14, 162, 19(1), 300
Customs Act, 1962 — Section 25
Maharashtra Secondary and Higher Secondary Education Boards Regulations, 1977 — Regulation 104
Mines and Minerals (Development and Regulation) Act, 1957 — Section 15

Citation : (1999) 5 ALD 693 : (1999) 5 ALT 274

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Mr. K. Durga Prasad and Mr. P. Girish Kumar, for the Appellant; Mr. C. Sadasiva Reddy, Government Pleader for Home, for the Respondent

Judgement

1. Messers Nataraj theatre has filed WP No.21691 of 1995 praying for a writ of mandamus or any other appropriate writ declaring the memo issued by the Government of Andhra Pradesh, the 1st respondent herein bearing No.1730/Genl.A1/ 94-3 dated 23-5-1995 (the impugned order) as illegal and arbitrary and also to set aside all the consequential orders issued by the Licensing Authority under the A.P. Cinemas (Regulation) Act, 1955 (Act No.4 of 1955, hereinafter referred to as the Act). The other writ petition being WP No.30691 of 1998 is filed by the Chand Talkies questioning the same impugned order. Messers Chand Talkies also questioned Rule 10-A of the A.P. Cinemas (Regulation) Rules, 1979 (hereinafter called as the Rules) as ultra-vires and unconstitutional insofar as the same imposes time limit for reduction of seating capacity in the petitioner's cinema theatre.

2. As both the writ petitions came to be framed in the same set of facts and

circumstances and raise common questions of law and facts, both the writ petitions are being disposed of by this common order.

3. Before considering the questions of law, the facts leading to filing of these cases may be briefly stated. Messers Nataraj theatre is a theatre with ultra-modern facilities. The theatre's gross collection came down in recent years. The reason attributed by the petitioner is the advent and proliferation of private Satellite television channels like Star T.V., ET.V. and Cable T.V. etc., In the light of the changed circumstances, the petitioner made an application to the Licensing Authority. Needless to mention that the Licensing Authority is the Joint Collector in the District and the Commissioner of Police where the cities are under a Police Commissionerate. Be that as it may, in the application made by the petitioner to the Licensing Authority he prayed for permission to reduce the seating capacity and also for enhancement of the rates. In the said application dated 8-8-1995 he explained various increasing difficulties. He also enclosed the profit and loss account and other necessary documents. If the Licensing Authority grants permission for reduction of seating capacity, the petitioner says that there will not be any loss to the Government of A.P. with regard to collection of entertainment tax. The Licensing Authority vide Proceedings in Roc. No.9077/95(c2) dated 25-8-1995 rejected the petitioner's application dated 8-8-1995. The Licensing Authority entirely based its orders on the directions contained in the impugned order. The rejection is also on the ground that the petitioner already availed the facility of reduction of seating capacity after 21-5-1988 and therefore the same is not liable to be considered afresh. Aggrieved by this, the petitioner filed the present writ petition.

4. The facts in WP No.30691 of 1998 may also be noted in brief. The petitioner applied to the Licensing Authority seeking reduction of seating capacity from 650 to 325. The reasons are the same as mentioned above. The petitioner also mentioned that the theatre being a non-air-conditioned one, there is no scope for increase in the admission rates. The said application was rejected by the Licensing Authority on 28-10-1998. In the order, the Licensing Authority observed that the petitioner has already availed the facility of reduction of seating capacity to 20% in accordance with the impugned order. Therefore, he is not eligible for further reduction in seating capacity. Aggrieved by this order, the petitioner approached this Court. The petitioner has also impeached Rule 10-A of the Rules on the ground that the same violates the fundamental right of the petitioner under Article 19(1)(g) of the Constitution of India besides being ultra-vires the Act and rule making power. It is the grievance of the petitioner that the Licensing Authority has got absolute right to reduce the seats in the cinema theatre. Such right is only subject to the provisions of the Act and the Government has no power to make rules or issue administrative instructions prohibiting or restricting the reduction of seats to certain extent or prescribing cut off date for making an application seeking reduction of seating capacity. It is the pleading of the petitioner that as long as floor area fixed as per clause 19 of Appendix-I to the Rules is the basis for regulating the number of persons to be

admitted, the petitioner's right to choose floor area cannot be infringed as Rule 10-A makes the event of reduction of seating capacity subject to the conditions mentioned in clauses (a) and (b) of the proviso to Rule 10-A. The same is ultra-vires the Act.

5. In both the writ petitions, the impugned memo has been challenged on similar grounds. According to the petitioners, the object of Rule 10-A (assuming that Rule 10A was intra-vires) is to provide a remedy to licensee to seek reduction of seating capacity when the theatre is running in loss. The impugned memo defeats the very object of the rule if the condition in Para 3(1) of the impugned memo is given effect to. The said para permits the licensee to seek reduction of seating capacity if they have not availed the benefit from 21-5-1998. Virtually, if a theatre has availed the reduction of seating capacity the impugned memo debars the licensee to seek further reduction after 21-5-1998. This condition is discriminatory, unreasonable and violates not only the rights under Article 14 but also the rights under Article 19(1)(g) of the Constitution. The same creates an unreasonable restrictions on the right to freedom of trade and commerce. The impugned memo also violates Article 300-A of the Constitution of India. If the licensee is forced to run a theatre under loss and his right to seek reduction of seats is deprived after 21-5-1988, it is submitted that the same is unreasonable and has no nexus with the object of Rule 10-A.

6. As pointed out earlier in WP No.30691 of 1998 the petitioner also challenged Rule 10-A of the Rules on the ground that the same is ultra-vires, as the Government of Andhra Pradesh has no power to make such rule. The same is contrary to the provisions of the Act. Rule 10-A is also challenged on the ground of being unreasonable and the same violates fundamental rights under Article 19(1)(g) of the Constitution and the same is also arbitrary in so far as it prohibits reduction of seating capacity beyond a particular date. Rule 10-A has no reasonable nexus with the object sought to be achieved in the context of the Act which has to regulate the buildings, exhibition of films and public safety. As entertainment tax is payable on the basis of seating capacity irrespective of actual sales of the tickets, restriction for reduction of seating capacity is unreasonable from that point of view. It is further averred that under clause 19 of Appendix-I to the Rules, seating capacity is 25 persons per 9 square metres of floor area with chairs. The seating capacity is 30 persons per 9 square metres in an area without chairs excluding entrance, passage, gangway, stage, stair cases and all places to which the public are not admitted. That being the position, the option to fix floor area is entirely with the licensee and the seating capacity being dependent on floor area, increasing the seating capacity or reducing the seating capacity is outside the purview of the Licensing Authority under the Act or rules.

7. A batch of writ petitions are filed questioning the impugned memo. The Government of Andhra Pradesh through their Deputy Secretary to Government in Home Department filed a common counter. The counter-affidavit was sworn on 16-11-1998. The averments in the counter reveal the following. From time to

time, the Government of Andhra Pradesh issued memoranda/Government Orders laying down guide-lines for considering the applications of the owners of cinema theatres seeking reduction of seating capacity. One such is G.O. Ms. No. 185 Home (Genl-A) Department dated 21-5-1988. It contains guide-lines to the Licensing Authorities to be followed while considering the applications for reduction of seating capacity who have not availed the benefit as on 21-5-1998. As many representations were made by the owners of the theatres, the Government issued impugned memo. Subsequently, the guide-lines issued were extended upto 31-12-1998. Any reduction of seating capacity in excess of 20% would result in evasion of entertainment tax. On one hand the petitioners are seeking reduction of seating capacity on the ground of impact of Satellite Television, Cable Television etc., and on the other hand increasing admission rates abnormally ranging from Rs.20/- for Second Class to Rs.40/- for First Class. The demand for increase of rates consistently indicates that there is no fall in the number of cinema goers and request for reduction in seating capacity is with a motive to fix high rates for upper class and get more profits. The instructions issued by the Government are in accordance with sub-section (2) of Section 5 of the Act. As the petitioners have availed the benefit under various Government memoranda issued from time to time, the petitioners may not be permitted to question the impugned order. It is also averred that some of the petitioners have directly approached this Court and obtained interim orders for reduction of seating capacity without first approaching the Licensing Authority.

8. The counter further says that the seating arrangement in the cinema theatres shall be as indicated in Para 19 of Appendix-I to the Rules which prescribe various open spaces and the distance from one row to the next row. Para 19 gives and prescribes maximum number of seats which is calculated at 25 persons per 9 square metres. Therefore, if any reduction is allowed more than 20%, the same would result in evasion of entertainment tax. The theatre managements are requesting reduction of seating capacity ranging from 20% to 40% of the original seating capacity and while reducing the seating capacity, the managements are not following the provisions of Para 19 of Appendix-I read with Rule 10-A of the Rules. Rule 10-A was amended by G.O. Ms. No.332 Home (Genl-A) Department dated 25-7-1987 and in the light of the said G.O., the Government from time to time authorised the Licensing Authority to entertain and dispose of the applications in accordance with the guidelines contained in the various orders. The impugned memo was issued to remove certain difficulties in enforcing Rule 10-A of the Rules. The said memo was issued only to restrict the powers of the Licensing Authority under Rule 10-A. As repeated reduction of seating capacity tends to affect the collection of entertainment tax and in turn development of film industry would be affected various instructions were issued to the Licensing Authority. The Licensing Authorities were not allowed to reduce the seating capacity fixed in the licence in "B"-Form unless the conditions contained are fulfilled. In the light of this, the various executive instructions in the impugned memo have a statutory backing and were issued while taking into

consideration the representations made by the theatre managements.

9. The counter-affidavit also adverts to permission given to managements to collect maintenance charges at the rate of 25 ps and 10 ps in Air Conditioned and Non-Air Conditioned theatres respectively and the various aspects regarding permission granted to the theatres for enhancing rates of admission for 1st class and other classes. As the main controversy in these writ petitions do not concern with these two aspects, the details are not necessary in this context.

10. The learned Counsel for the petitioner in WP No. 1688 of 1988 filed additional affidavit and prayed this Court to treat it as additional affidavit in these two writ petitions. Accordingly, the additional affidavit filed in WP No.1688 of 1995 is being treated as additional affidavit in these two writ petitions. In the additional affidavit, it is stated that in the year 1988 there were limited T.V. Channels and the Doordarshan was telecasting only one regional movie in a week. By the year 1999 the number of T.V. Channels were increased to about 40 to 60 which are transmitted through cable T.V. network. These cable T.V. Channels telecast 10 to 15 movies for a day in various languages. The following aspects have been placed by way of comparison:

(i) The production of films in 1988 was nearly 250 to 300 in Telugu language; and 50 to 100 dubbing movies from various language into Telugu language. But the production of films in 1998-99 is only 50 in Telugu language and less than 10 dubbing movies.

(ii) The electrical charges in the year 1988 was 80 paisa per unit; and the electrical charges in the year 1999 is @ 4-90 paisa per unit.

(iii) The salaries of theatre employees in the year 1988 was Rs.600/- to 1500/- per month. Whereas their salaries in the year 1999 are Rs.-4500/- to 70007-pm.

(iv) The carbon price in the year 1988 was below Rs.27- per piece and its price in the year 1999 is Rs.22-20 paisa per piece.

(v) The water charges in the year 1980 were below Re.1/- whereas the water charges in the year 1999 are Rs.6/-.

(vi) Previously most of the lady audience used to see morning shows. But after the advent of TV channels more than 80% of lady audience have been reduced in the morning shows.

(vii) Previously the cost of film production was low. Now the cost of film production, has been increased substantially and the remuneration of Stars have also been increased, thereby the Distributors are demanding very high amounts for release of films in the theatres.

11. In the additional affidavit it is further averred that the Act fixes maximum number of persons to be admitted to the theatre but the Act nowhere mentions the minimum number of persons to be admitted in the theatre. In view of this a licensee cannot be compelled to carry on the business with a fixed number of

seats and paying the tax based on such seating capacity. A licensee cannot be compelled to carry on business in a particular manner even where it results in financial loss. In view of the fact that after 1985 there is only one slab system, the theatre has to pay tax as per the agreement entered into with the Licensing Authority irrespective of the gross collections. Therefore, there cannot be any restriction on the right of the licensee to seek reduction of seating capacity.

12. This Court heard the learned Counsel for the petitioners and the learned Government Pleader for Home. Lengthy arguments were addressed on various days when the cases were taken up for hearing. At the Counsel reiterated the submissions which have already been noticed while narrating the facts as obtaining from the pleadings. Now the points that arise for consideration are as follows:

Points for Consideration :

(i) Whether Rule 10-A of the A.P. Cinemas (Regulation) Rules, 1979 is ultra-vires the provisions of the A.P. Cinemas (Regulation) Act, 1955?

(ii) Whether the Memorandum bearing No.1730/Genl.A1/94-3 dated 23-5-1995 issued by the Government of Andhra Pradesh is not without power or jurisdiction and is not illegal and ultra-vires?

(iii) Whether the Memorandum issued by the Government of Andhra Pradesh is arbitrary and unreasonable?

(iv) Whether the Licensing Authority had abdicated the statutory functions thereby rendering the order passed by the Licensing Authority illegal and bad?

(v) To what relief?

Point No.(i):

The learned Counsel for the petitioner in WP No.30691 of 1998 Sri P. Girish Kumar has contended that Rule 10-A of the Rules is ultra-vires the Act. It is his submission that the Act nowhere stipulates the minimum seating capacity. There is no mandatory stipulation regarding extent of minimum floor area. The Act itself is concerned with regulating operation of cinema halls keeping in view the public welfare and public interest. Rule 6 read with Para 19 of Appendix-1 to the Rules only stipulates maximum number of persons to be permitted which is 25 persons per 9 square metres of floor area. Therefore, the Act is not concerned with the minimum number of seats in a theatre as long as the owner of the theatre maintains the specifications contained in Para-19 of Appendix-I to the Rules. When the Act itself is silent as to fixing the minimum number of seats, the rule making authority is not competent to resort to delegated Legislation u/s 11 read with Section 6 of the Act. What has been omitted by the parent Act cannot be subject-matter of the delegated Legislation. The learned Counsel for the petitioner also further submitted that Rule 10-A has no nexus with the object which the Act seeks to achieve. Rule 10-A is also unreasonable and illegal.

Refuting the contention of the learned Counsel for the petitioner, the learned Government Pleader contended that a reading of sub-section (1) of Section 11 and Section 6 of the Act makes it very clear that Rule 10-A is within the power of rule making authority and therefore the same is not without power or jurisdiction. Rule 10-A reads as follows:

Rule 10-A: Alteration of the seating capacity:--The seating capacity fixed in "B* Form licence shall not be allowed to be reduced.

Provided that if the Licensing Authority is satisfied that the licensee exhibiting cinematograph exhibitions is under loss, the Licensing Authority may reduce the seating capacity fixed in "B" Form licence on an application made by a licensee on or before (1st March, 1994) subject to the conditions that:

(a) the seating capacity in the auditorium is fixed in such a way that no extra seat can be fixed in any classes of admission where the seats are fixed; and

(b) that all other classes of admission where the seats are not fixed and where there is open space, the number of seats shall be determined as per Para 19 of the Appendix-I to the said rules."

13. Before dealing with the contention of the learned Counsel for the petitioner, it is necessary to notice the tests which are applied for examining the validity of the rules. In Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, , the Hon"ble Supreme Court has laid down the tests as follows:

"..... whether a rule or regulation or other type of statutory instrument--is in excess of the power of subordinate Legislation conferred on the delegate has to be determined with reference only to the specific provisions contained in the relevant statute conferring the power to make the rule, regulation, etc., and also the object and purpose of the Act as can be gathered from the various provisions of the enactment. It would be wholly wrong for the Court to substitute its own opinion for that of the Legislature or its delegate as to what principle or policy would best serve the objects and purposes of the Act and to sit in judgment over the wisdom and effectiveness or otherwise of the policy laid down by the regulation to be ultra vires merely on the ground that, in the view of the Court, the impugned provisions will not help to serve the object and purpose of the Act. So long as the body entrusted with the task of framing the rules or regulations acts within the scope of the authority conferred on it, in the sense that the rules or regulations made by it have a rational nexus with the object and purpose of the Statute, the Court should not concern itself with the wisdom or efficaciousness of such rules or regulations. It is exclusively within the province of the Legislature and its delegate to determine, as a matter of policy, how the provisions of the Statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act. It is not for the Court to examine the merits or demerits of such a policy

because its scrutiny has to be limited to the question as to whether the impugned regulations fall within the scope of the regulation-making power conferred on the delegate by the Statute."

14. In the above judgment, the Supreme Court was dealing with question whether clause (3) of Regulation 104 of Maharashtra Board of Secondary Education Regulations is ultra vires the Maharashtra Secondary and Higher Secondary Education Boards Regulation Act, 1965. The Bombay High Court struck down the impugned regulation on the ground that the same is illegal, ultra vires and void. The matter was carried to the Supreme Court by the Maharashtra Board of Secondary Education. The approach of the Bombay High Court in examining the Legislature policy behind Regulation 104 on the touch stone of principles of natural justice was not accepted by the Supreme Court. The Hon"ble Supreme Court dealing with this aspect further held:

"The Court cannot sit in judgment over the wisdom of the policy evolved by the Legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that in its opinion, it is not a wise or prudent policy, but is even a foolish one and that it will not really serve to effectuate the purposes of the Act. The Legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution."

15. In *I.E. Newspapers (Bombay) Private Ltd. v. Union of India* (1), (1986) 159 ITR 856 (SC) , the Hon"ble Supreme Court dealing with notification of the Government of India issued u/s 25 of the Customs Act, 1962 has laid down the following tests for examining the Subordinate Legislation:

"A piece of Subordinate Legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent Legislature. Subordinate Legislation may be questioned on any of the grounds on which plenary Legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because Subordinate Legislation must yield to plenary Legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary. In England, the Judges would say "Parliament never intended authority to make such rules. They are unreasonable and ultra vires","

16. Therefore the Constitutional validity of Rule 10-A of the Rules has to be decided with reference to the power conferred on the rule making authority. Section 11 of the Act empowers the Government to make rules for carrying out the purpose of the Act. The purpose of the Act is regulation of exhibition by means of cinematographs. The word "regulation" has been repeatedly interpreted by the Courts as also including the power to prohibit. A look at the provisions of the Act and the Rules would make it clear that a owner of the cinema theatre has to construct a cinema theatre subject to the provisions of the Act. The licensee has to satisfy the requirements under Rule 6 and the conditions as specified in Appendix-I, II, III and IV as the case may be. The requirements are as to the site specifications for construction of cinema buildings and other general matters. Under Rule 12(2), the Licensing Authority after satisfying that the applicant is in lawful possession of the site, building and equipment grant a licence in Form-B with or without additional conditions thereto, consistent with the provisions of the rules and in interest of health and safety of the public. Therefore, any licence shall have to be in accordance with the Act and the Rules. Column 11 of "B" Form licence stipulates maximum number of persons permitted and maximum rates of admission allowed in each part of auditorium under sub-para 1 of Para 19 of Appendix-I. Sub-rule (3) of Rule 12 authorises the Licensing Authority to fix maximum rates for admission to the different classes in the licensed premises. Fixing of maximum number of persons to be permitted into the auditorium and the power to fix maximum rates for admission are not only with reference to the public safety but also with reference to the A.P. Entertainment Tax Act, 1939 (hereinafter called as the Entertainment Tax Act). The purpose of the rules is to carry out the objects of the Act as well as the objects of the Entertainment Tax Act, This cannot be denied. Therefore, Rule 10-A which deals with the alteration of seating capacity is directly related to the object of the Act. The same cannot be said to be ultra vires the powers of the rule making authority. The contention of the learned Counsel that under para 19 of Appendix-I to the Rules, it is only the maximum seating capacity that can be fixed with reference to floor area and there cannot be minimum seating capacity cannot be accepted. The power to fix maximum seating capacity with reference to the specifications under Para 19 has to be construed as also including the power to fix minimum seating capacity.

17. The learned Counsel for the petitioners as well as the learned Government Pleader for Home have relied on the judgment of a Division Bench of this Court in State of A.P. v. A.P. Cinema Exhibitors, 1978 (2) APLJ 442, to support their respective contentions. According to the learned Counsel for the petitioner the judgment of the Division Bench is an authority for the proposition that reduction in the revenue cannot be a ground for not permitting the reduction of seating capacity. Whereas the learned Government Pleader has pressed the judgment to support his contention that the authorities have also got power to fix the seating capacity including reduction of seating capacity.

18. In State of A.P. v. A.P. Cinema Exhibitor's case (supra) interpretation of

explanation to Section 4C and the Explanation to Section 5 fell for consideration. Explanation u/s 5(1) of the Entertainment Tax Act resulted in freezing the seating capacity in a theatre as on 1-4-1976 without any option to the owner of the theatre to reduce the seating capacity. Whereas Explanation to Section 4C permitted the owner of the theatre to pay Entertainment Tax on the actual seating capacity after 1-4-1976 subject to any reduction. Pointing out that there is no justification for choosing the date 1-4-1976 for making distinction among the theatres constructed before 1-4-1976 and the theatres which came into existence after 1-4-1976, the learned single Judge held that Explanation to Section 5(1) is applicable to the existing theatres in the first year after coming into force of the Amendment Act 58 of 1976 and thereafter Explanation to Section 4-C alone would be applicable. The matter was carried in appeal to the Division Bench. Before the Division Bench the argument of the State was that Explanation to Section 5(1) was incorporated with an apprehension that the theatre owners may seek the benefit of Section 5 to reduce the seating capacity drastically, which if permitted would result in reduction of income to the State. This argument was repelled by this Court thus:

"The seating capacity is fixed in accordance the provisions of the A.P. Cinemas (Regulation) Act, and the Rules made thereunder. The seating capacity, and other particulars can be revised only with the permission of the competent authority under those provisions. It is to be presumed that whenever an exhibitor applies for reduction in seating capacity, the authorities under the said Act and the Rules would examine the request on merits and would permit the revision therein only on being satisfied about the genuineness thereof. Further, there appears to be no reason to presume that the exhibitors would reduce their seating capacity only with a view to reduce their liability under the Act. If the apprehension is that the exhibitors may reduce their seating capacity and yet admit more number of persons into the theatre that can always be guarded against. But certainly the Explanation is not the remedy. An exhibitor may admit more number of persons whatever the sanctioned seating capacity may be. That would, of course, be a violation of the relevant provisions of the Andhra Pradesh Cinemas (Regulation) Act and the Rules, which can be met and remedied by taking appropriate action under those provisions. May be, such a violation may even entitle the authorities under this Act too, to revoke the composition agreement itself, on the ground that the exhibitor has deliberately violated the very basic premise of the agreement, which, at the same time, results in depriving the State of the lawful revenue to that extent. Ordinarily, however once the reduction in seating capacity is validly sanctioned by the competent authority, the authority under the Entertainments Tax Act cannot choose to ignore the same, or say that the said reduction or the sanction thereof is not genuine or bona fide"

19. Therefore, the question raised by the learned Counsel for the petitioner is no more res integra. The Division Bench in State of A.P. v. A.P. Cinema Exhibitor's case (supra) has categorically held that the Act as well as the Rules empower the competent authority to reduce the seating capacity. It may be noted that Rule 10-

A was introduced in the rules by way of Amendment by G.O. Ms. No. 12 dated 17-1-1987 after the judgment of the Division Bench in *State of A.P. v. A.P. Cinema Exhibitor's case* (supra). Therefore, the point No. 1 is answered against the petitioners. Nonetheless the cut off date in proviso to Rule 10-A cannot be sustained as the same is manifestly arbitrary.

20. In view of the law declared by the Hon'ble Supreme Court in *Maharashtra State Board of Secondary and Higher Secondary Education case* (supra) and *Indian Express Newspapers' case* (supra) the other aspect of submission with reference to Rule 10-A cannot be considered. The reasonableness or otherwise of Rule 10-A cannot be a ground to test the validity of the Rule on the touch stone of doctrine of ultra vires. Nor the wisdom or otherwise of the Delegated Legislation is within the perview of the Court testing the Delegated Legislation.

Points ii & iii:

Points ii and iii may be taken up together. Under these points, the competency of the Government of Andhra Pradesh in issuing impugned memo and also the reasonableness and unarbitrariness of the impugned memo are considered.

21. The learned Counsel Sri K. Durga Prasad for the petitioner in WP No.21691 of 1995 submits that the Government has no power to issue impugned memo. It is contrary to the provisions of the Act and also the Rules especially Rule 10-A of the Rules. The main challenge is with reference to clauses (i) and (ii) of para 3 of the impugned memo, Alternatively it is submitted by the learned Counsel that the maximum reduction in seating capacity restricted to 20% was fixed in 1988. The same was taken into consideration due to the advent of Satellite Televisions but not taking into consideration the further developments in the field of film industry, which according to the learned Counsel is unreasonable. He has also high-lighted this by bringing to the notice of the Court the various drastic changes that the film industry is going through. It is mainly contended that the wages payable to the workers have gone up, current consumption charges have gone up, the number of cable T.V. Channels has increased by tenfold, the number of Telugu films produced per year has gone down and there is a general tendency among the cine goers not to patronise the cinema theatres for their entertainment. Elaborating his arguments further, the learned Counsel submits that stipulating an artificial cut off date is not only irrational for the reasons mentioned hereinabove, but also says that the view of the Government that there would be a fall in or evasion of entertainment tax to the State exchequer is a myth. To drive home this point, he submits that in view of the hike permitted by the Government in admission charges, which has gone up by more than 300% even if the seating capacity is reduced there would not be reduction in the gross collections, which is the basis for calculating the entertainment tax. For example assuming that a cinema theatre with a seating capacity of 1000 is getting gross collections of "Y" amount. When the average admission charges are Rs.X, even if the seating capacity is reduced to 300 or for that matter 500, the gross collection would not come down because average admission charges

are at present fixed at X x 4 in which event the gross collection would be Y x X x 4 - the amount that might have been fetched from the reduced seats at minimum rates. Therefore, in sum and substance, the submission of the learned Counsel is that the impugned memo is not only without power and jurisdiction but also arbitrary and unreasonable. The learned Counsel for the writ petitioner in WP No.30691 of 1998 Sri Girish Kumar also made submissions on the same lines.

22. Refuting these submissions, the learned Government Pleader for Home Sri C. Sadasiva Reddy submitted that the Government have power u/s 5 of the Act to issue instructions to Licensing Authority. The impugned memo falls within the scope of Section 5 of the Act, therefore it is within the powers and the same is intra vires. Further it is submitted on behalf of the Government that reducing seating capacity only to the extent of 20% as existed on 21-5-1988 is not arbitrary and unreasonable and if more reduction of seating capacity is allowed much extra space is left giving scope of the theatre management to provide extra seats and evade entertainment tax.

23. The impugned memo is in continuation of memo No.578/Genl./A/88-4 dated 21-5-1988. As can be seen from the impugned memo, the Government purports to delegate powers to the Licensing Authority under Memo dated 21-5-1988 to accord necessary permission to the theatres for reduction of seating capacity in the theatres not exceeding 20% of the total seating capacity. As it was brought to the notice of the Government that there are other theatres which have not availed the opportunity given by the Government vide memo dated 21-5-1988 and as some managements are directly making applications to the Government requesting for reducing the seating capacity, the Government issued the impugned memo. Paragraph 3 of the impugned memo is important for the purpose of this case and the same is as follows:

"Government after careful consideration of the matter hereby extend the time upto the end of December, 1995 so as to enable the Licensing Authorities to consider and dispose of the applications of the theatre managements, who have not availed the benefit so far, subject to the conditions already stipulated in the Memos and also the following conditions:

- (i) The reduction shall be permitted in respect of the theatres which have not availed the benefit so far from 21-9-1988.
- (ii) The reduction shall not exceed 20% of the seating capacity existing as on 21-5-1988.
- (ii) The reduction shall be permitted to the theatres which are running on losses.
- (iv) The seating arrangement after reduction shall be in such a way that no extra seat can be fixed in the auditorium.
- (v) In the other classes of auditorium where seats are not fixed and where there is open space, the number of seats shall be determined as per Para 19 of

Appendix-I of A.P. Cinemas (Regulation) Rules, 1970."

24. The Counsel have no grievance to make with regard to clauses (iii), (iv) and (v) of Paragraph 3 extracted above. In fact clauses (iii), (iv) and (v) are the conditions mentioned in Rule 10-A which enable the Licensing Authority to entertain an application for reduction of seating capacity. Therefore concedingly there is no objection for these three clauses of Paragraph 3 of the impugned memo. The main objection is against the offending clauses (i) and (ii) of paragraph 3. These two clauses restrict the right to seek reduction of seating capacity not only with reference to the number of seats to be reduced but also prohibit to seek reduction of seating capacity more than one time.

25. Now we may again notice the contents of Rule 10-A. Rule 10-A has a heading "Alteration of Seating Capacity". Rule 10-A as such says that the seating capacity fixed in "B" Form licence shall not be allowed to be reduced. There is a proviso under the Rule which empowers the Licensing Authority to accord sanction for reduction of the seating capacity if the Licensing Authority is satisfied that the licensee is under loss. Such sanction under the proviso to Rule 10-A is subject to the condition that when the seating capacity is reduced, it should be done in such a manner that there shall not be any scope for fixing or allowing extra seats and that the open space shall be decided in accordance with Para 19 of Appendix-I to the Rules. It is, therefore very clear that the impugned memo is grossly contrary to Rule 10-A. There cannot be two opinions that the impugned memo is beyond the scope of Rule IO-A and in fact it scuttles the Rule. The petitioners are therefore justified in their contention that the impugned memo is without power and ultra vires.

26. The learned Government Pleader further submits that sub-sections (2) and (3) of Section 5 of the Act empower the Government to issue guide-lines and that the Licensing Authority is bound to grant licences. In support of his submission, the learned Government Pleader relied on the judgment of the Supreme Court in Deepak Theatre, Dhuri Vs. State of Punjab and others, . Before proceeding any further, it is useful to refer to Section 5 of the Act.

"5. Restrictions of powers of Licensing Authority:

(1) The Licensing Authority shall not grant a licence under this Act, unless it is satisfied that-

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

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

(2) Subject to the foregoing provisions of this section and to the control of the Government, the Licensing Authority may grant licences under this Act to such persons as that authority thinks fit and on such terms and conditions and subject to such restrictions as it may determine.

(3) The Government may, from time to time, issue directions to licensees generally or to any licensee in particular for the purpose of regulating the exhibition of any film or class of films, so that scientific films, films intended for educational purposes, films dealing with news and current events documentary films or indigenous films secure an adequate opportunity of being exhibited and where any such directions have been issued, those directions shall be deemed to be additional conditions and restrictions subject to which the licence has been granted."

27. Section 5 of the Act throws an obligation on the Licensing Authority (Section 4 indicates Licensing Authority) to grant licence under the Act subject to the Rules and subject to adequate precautions to be taken by the licensee for providing safety of the persons attending the cinema theatre. This is what sub-section (1) of Section 5 says. Next comes sub-section (2) which starts with the words subject to the provisions of sub-section (1) and to the control of Government", the Licensing Authority may grant licence in accordance with subsection (1). As per sub-section (3), the Government is empowered to give directions to the licensee in general or to any licensee in particular for the purpose of regulating any class of films. This power is conferred on the Government, as can be seen from sub-section (3) itself, to secure an adequate opportunity of exhibiting the scientific films, educational films, documentary films, indigenous films and films dealing with news and current events. When the Government exercise powers under sub-section (3) those shall be deemed to be additional conditions and restrictions subject to which licence has been granted.

28. In my considered view the power to control vested in the Government under sub-section (2) should be interpreted as that power to fill up the gaps or vaccume in the Rules. The power to control is also qua sub-section (3) of Section 5. This interpretation is supported by a judgment of Supreme Court in *Bharat Cooking Coal Ltd v. State of Bihar*, (1990) 4 SCC 557 and also a Division Bench judgment of this Court in *Sona Exports Vs. The Director of Mines and Geology and others*, . In *Bharat Cooking Coal case* (supra) the Supreme Court has held as follows:

"..... the executive power of the State Government is co-extensive with the Legislative power of the State Legislature..... State has executive power to deal with those matters subject to other provisions of the Constitution. If a subject matter falls within the legislative competence of State Legislature, the exercise of executive power by the State Government is not confined, as even in the absence of a law being made, the State Government is competent to deal with the subject matter in exercise of its executive power. See *Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab*, . In the absence of any law, the State Government or its officers in exercise of executive authority cannot infringe citizen's rights merely because the State Legislature has power to make laws with regard to subject, in respect of which the executive power is exercised. See *State of Madhya Pradesh and Another Vs. Thakur Bharat Singh*, . No doubt under

Entry 23 of List II, the State Legislature has power to make law but that power is subject to Entry 54 of List I with respect to the regulation and development of mines and minerals. As discussed earlier the State Legislature is denuded of power to make laws on the subject in view of Entry 54 of List I and the Parliamentary declaration made u/s 2 of the Act. Since State Legislature's power to make law with respect to the matter enumerated in Entry 23 of List II has been taken away by the Parliamentary declaration, the State Government ceased to have any executive power in the matter relating to regulation of mines and mineral development. Moreover, the proviso to Article 162 itself contains limitation on the exercise of the executive power of the State. It lays down that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of State shall be subject to limitation of the executive power expressly conferred by the Constitution or by any law made by Parliament upon the Union or authority thereof. The limitation as contained in the proviso to Article 162 was necessary to avoid conflict in the exercise of executive power of State and the Union Government in respect of matters enumerated in List III of the Seventh Schedule."

29. In *Sona Exports* case (supra) a Division Bench of this Court considered the scope of the power of the Officer on Special Duty to give instructions to the Director of Mines who is the Licensing Authority for issuing licensees as per A.P. Minor Mineral Concession Rules 1966 framed u/s 15 of the Mines and Minerals (Regulation and Development) Act, 1957. Holding that Officer on Special Duty has no authority under the Rules to issue any directions to the Director in the matter grant of leases, this Court held:

"As a matter of fact, since the field is occupied by a Legislative enactment and the rules framed in terms therewith, the only authority prescribed under the law has the jurisdiction to take steps in terms of authorisation as is available under the statute or the rules framed thereunder. There cannot possibly be any other authority over and above the Director in terms of the provisions of the rules and in that view of the matter, since the rules do not enjoin any Officer on Special Duty, question of the exercise of jurisdiction by an authority in the name of Officer on Special Duty does not and cannot arise and as such Officer on Special Duty cannot thus have any authority in terms of the provision of the rules to issue any Directive as has been effected in the matter and being impugned in the writ petition."

30. Therefore, there is abundant authority to hold that the power of control vested in the Government under subsection (2) of Section 5 of the Act springs into action only when there is vacuum in the Rules made by the Government in exercise of the powers u/s 11 of the Act. Therefore, it should be held on point No.ii that the impugned memo is without power or jurisdiction and is ultra vires.

31. The learned Government Pleader, as mentioned above, has relied on *Deepak Theatre* case (supra). Section 5 of Punjab Cinemas (Regulation) Act, 1952 is in pari materia with Section 5 of the Act except sub-section (3) of Section 5 of

Punjab Act. In exercise of powers u/s 5, the State of Punjab issued a proceeding classifying the seats for admission into four classes. The same was challenged as offending the Fundamental Right to carry on business under Article 19(1)(g) of the Constitution. The learned single Judge of Punjab and Haryana High Court declared that the action of the State of Punjab is ultra vires the power of the Government and also as offending Article 19(1)(g) of the Constitution. On appeal by way of LPA a Division Bench reversed the judgment of the learned single Judge and upheld the power of the Licensing Authority. Interpreting various provisions of Punjab Act, the Supreme Court held that fixing the rates of admission and classification of seating is within the powers of the Licensing Authority. The case is not an authority to support the contention of the learned Government Pleader that the Government have such power u/s 5 to issue impugned memo. In Deepak Theatre's case (supra) the Act and the Rules were silent with regard to classification of seats for admission as well as fixing rates of admission. The Hon'ble Supreme Court, therefore upheld the power of the Licensing Authority subject to the control of the State Government to fix the rates of admission which was held to be integral and essential part of the power of regulating exhibition of cinematograph. In view of this, the submission of the learned Government Pleader for Home is liable to be rejected.

32. Indeed, the scope of Section 5 of Punjab Cinemas (Regulation) Act was considered by a Constitution Bench of the Supreme Court in State of Punjab and Another Vs. Hari Krishan Sharma, . In the said case, the Government of Punjab issued instructions in regard to the grant of licence under the relevant provisions of the said Act. These instructions required the Licensing Authorities to forward all the applications for licences to the Government. In accordance with this, the application of the respondent was forwarded to the Government which was rejected. Questioning the rejection order, the respondent filed writ petition before the High Court of Punjab. The Punjab High Court advertent to the question of jurisdiction of Government of Punjab upheld the respondent's contention that the Government had no jurisdiction to deal with the matters which are entrusted to the Licensing Authority under the Act. The matter was brought before the Supreme Court by Special Leave and the question that fell for consideration was as to how sub-section (2) of Section 5 of Punjab Act has to be construed. It may be mentioned that subsection (2) of Section 5 of Punjab Act is in pari materia with sub-section (2) of Section 5 of the Act. Dealing with this contention, the Hon'ble Supreme Court held as follows:

"Is appellant No.1 justified in assuming jurisdiction which has been conferred on the Licensing Authority by Section 5 (1) and (2) of the Act? It is plain that Section 5 (1) and (2) have conferred jurisdiction on the Licensing Authority to deal with applications for licences and either grant them or reject them. In other words, the scheme of the statute is that when an application for licence is made, it has to be considered by the Licensing Authority and dealt with u/s 5 (1) and (2) of the Act. Section 5(3) provides for an appeal to appellant No. 1 where the Licensing Authority has refused to grant a licence; and this provision clearly

shows that appellant No.1 is constituted into an appellate authority in cases where an application for licence is rejected by the Licensing Authority. The course adopted by appellant No.1 in requiring all applications for licences to be forwarded to it for disposal, has really converted the appellate authority into the original authority itself, because Section 5(3) clearly allows an appeal to be preferred by a person who is aggrieved by the rejection of his application for a licence by the Licensing Authority."

33. The State of Punjab contended that sub-section (2) of Section 5 of Punjab Act confers very wide powers of control on the Government and therefore the directions given were within the sweep of the controlling power. This contention was repelled thus:

"It is true that Section 5(2) provides that the Licensing Authority may grant licences subject to the provisions of Section 5(1) and subject to the control of the Government, and it may be conceded that the control of the Government subject to which the Licensing Authority has to function while exercising its power u/s 5(1) and (2), is very wide; but however wide this control may be, it cannot justify appellant No.1 to completely oust the Licensing Authority and itself usurp his functions. The Legislature contemplates a Licensing Authority as distinct from the Government. It no doubt recognises that the Licensing Authority which has to act and not the Government itself. The result of the instructions issued by appellant No.1 is to change the statutory provisions of Section 5(2) and obliterate the Licensing Authority from the Statute-book altogether. That, in our opinion, is not justified by the provision as to the control of Government prescribed by Section 5(2)."

34. The Supreme Court also held that though the power under sub-section (2) of Section 5 is very wide and any instructions and directions that are issued by the Government may guide the Licensing Authority, such power cannot be so utilised as to nullify the very power of the Licensing Authority as well as rendering provision regarding appeal to the Government redundant. In the said case sub-section (3) of Section 5 provided appeal to the Government against the orders of the Licensing Authority. It is expedient to refer to the observations of the Supreme Court in this regard:

"The control of Government contemplated by Section 5(2) may justify the issue of general instructions or directions which may be legitimate for the purpose of the Act and these instructions and directions may necessarily guide the Licensing Authority in dealing with applications for licences. The said control may, therefore, take the form of the issuance of general directions and instructions which are legitimate and reasonable for the purpose of the Act. The said control may also involve the exercise of revisional power after an order has been passed by the Licensing Authority. It is true that Section 5(2), in terms, does not refer to the revisional power of the Government; but having regard to the scheme of the section, it may not be unreasonable to hold that if the Government is satisfied that in a given case, licence has been granted unreasonably, or contrary to the

provisions of Section 5(1), or contrary to the general instructions legitimately issued by it, it may suo motu exercise its power to correct the said order by exercising its power of control.

In other words, in the context in which the control of the Government has been provided for by Section 5(2), it would be permissible to hold that the said control can be exercised generally before applications for licences are granted, or particularly by correcting individual orders if they are found to be erroneous, but in any case, Government has to function either as an appellate authority or as a revisional authority, for that is the result of Section 5 (2) and (3). Government cannot assume for itself the powers of the Licensing Authority which have been specifically provided for by Section 5 (1) and (2) of the Act. To hold that the control of the Government contemplated by Section 5(2) would justify their taking away the entire jurisdiction and authority from the Licensing Authority, is to permit the Government by means of its executive power to change the statutory provisions in a substantial manner; and that position clearly is not sustainable."

35. Section 7 of the Act provides for an appeal. Any person aggrieved by the decision of the Licensing Authority may prefer an appeal to the Government or to such Officer or Authority as may be specified.

36. As this Court held that the impugned memo issued by the Government is without power or authority being contrary to Rule 10-A, the same is ultra vires and the same is liable to be set aside. In view of this the other question whether the impugned memo is unreasonable or arbitrary need not be gone into. Therefore points (ii) and (iii) are decided accordingly.

Point No.iv:

The Joint Collector is the Licensing Authority. Rule 10-A confers powers on the Licensing Authority to entertain applications for reduction of seating capacity when the theatre owner is suffering a loss. No role is assigned to the Government to deal with such cases. The Licensing Authority is exercising statutory functions as a statutory authority. It is well settled that a statutory authority vested with statutory powers under a special enactment has to take independent decisions without being influenced by higher authority. In fact, Rule 10-A clearly says that it is the satisfaction of the Licensing Authority that is material and sine-qua-non for passing an order reducing the seating capacity. The Government has no say in this. If any Licensing Authority has passed orders rejecting the request of the owner of the cinema theatre for reduction of seating capacity (as it happened in these two writ petitions), the same amounts to abdication of statutory duty and vitiates the order of rejection. This legal position is well settled and two judgments of Supreme Court in *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, and *The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Others*, , amply support this view. *Gordhandas case* (supra), deals with granting a licence to build and start a cinema house. Under

the Bombay City Police Act, 1902, the Commissioner of Police is the Licensing Authority u/s 22. Section 22 vests absolute discretion in the Commissioner of Police. In the said case initially a licence was granted to Gordhandas to build a cinema house, later the same was cancelled by the Commissioner acting on the instructions of Government of Bombay. When the matter was brought before the Supreme Court, his Lordship Justice Vivian Bose after referring to various rules has held:

"It is clear to us from a perusal of these rules that the only person vested with authority to grant or refuse a licence for the erection of a building to be used for purposes of public amusement is the Commissioner of Police. It is also clear that under Rule 250 he has been vested with the absolute discretion at any time to cancel or suspend any licence which has been granted under the rules. But the power to do so is vested in him and not in the State Government and can only be exercised by him at his discretion. No other person or authority can do it..... The discretion vested in the Commissioner of Police under Rule 250 has been conferred upon him for public reasons involving the convenience, safety, morality and welfare of the public at large. An enabling power of this kind conferred for public reasons and for the public benefit is, in our opinion, coupled with a duty to exercise it when the circumstances so demand. It is a duty which cannot be shirked or shelved nor it be evaded, performance of it can be compelled u/s 45."

37. In *Purtabpur Company case* (supra), the Cane Commissioner altered reservation of cane area at the directions of the Chief Minister of the State which adversely affected *Purtabpur company*. The order passed by the Cane Commissioner, Bihar was challenged before the Patna High Court by way of writ petition which was dismissed. On appeal to the Supreme Court, the appellant contended that the Cane Commissioner abdicated the statutory functions by acting under the dictates of the Chief Minister. Accepting the factual position and while referring to *Gordhandas case* (supra) the Supreme Court held as follows:

"The executive officers entrusted with statutory discretions may in some cases be obliged to take into account considerations of public policy and in some context the policy of a Minister or the Government as a whole when it is a relevant factor in weighing the policy but this will not absolve them from their duty to exercise their personal judgment in individual cases unless explicit statutory provision has been made for them to be given binding instructions by a superior."

38. We may also recall *Hari Kishan's case* (supra). In the said case the Hon'ble Supreme Court held that the State Government was not justified in assuming jurisdiction conferred on the Licensing Authority by Section 5 (1) and (2) of *Punjab Cinemas (Regulation) Act*.

39. In both the writ petitions, the petitioners approached the respective Licensing Authority. The Licensing Authority rejected the application seeking reduction of seating capacity on the ground that as per the impugned memo the

application cannot be entertained. Therefore, the Licensing Authority has abdicated its statutory functions. The same has to be declared illegal and orders passed by the Licensing Authority are to be set aside. Point No.(iv) is therefore answered in affirmative in favour of the petitioners.

Point No.(v):

In view of the findings on points (i) to (iv) the impugned memo issued by the Government in Memo No.1730/Genl. A1/94-3 dated 23-5-1995 is set aside. Consequential orders passed by the Licensing Authority are set aside. It is brought to my notice that by virtue of interim orders passed by this Court in the respective interlocutory applications, the licensees made applications to the Government and the same were considered by the Government positively in favour of the licensees. In fact at one point of time, it was suggested by the learned Counsel for the petitioners that the matter may be disposed of in the light of the interim orders. However, the learned Government Pleader for Home prayed that as the problem is a recurring one, the Court may finally adjudicate the matter. Accordingly, the matter has been adjudicated recording findings on points for consideration.

40. Another aspect of the matter which has been brought to the notice of the Court by the learned Government Pleader is that though the principle challenge is with regard to Memo No.1730/Genl.A1/94-3, dated 23-5-1995 issued by the Government, the petitioners are also asking for a mandamus directing the Licensing Authority to permit enhancement in the rates of admission. According to the learned Counsel, the same is beyond the scope of writ petition. As there is force in the submission, the same is liable to be countenanced by this Court. However, keeping in view the conclusions of this judgment as well as intervening circumstances, the writ petitions are disposed of with the following directions:

(1) The impugned Memo No.1730/ Genl.A1/94-3 dated 23-5-1995 is declared as ultra vires, without power or jurisdiction and the same is set aside.

(2) Consequential orders passed by the Licensing Authority, if any, are vitiated as the Licensing Authority abdicated its statutory functions and acted as per the dictates of the Government, and they accordingly are set aside.

(3) If the petitioner has already been accorded permission for reducing seating capacity either by the Government or by the Licensing Authority, the same shall not be rescinded. However, if the order is passed by the Government pursuant to the interim orders of this Court, a formal order by the Licensing Authority is a must to save the order of the Government from the vice of being void order.

(4)The petitioner is permitted to make application to the Licensing Authority seeking reduction of seating capacity, if not already made before or during the pendency of the writ petition. Such application shall be considered in accordance with law and keeping in view the observations in this judgment. For the purpose of direction No.3 above the application made by the petitioner, if any, shall be

considered.

(5) If any licensee has reduced seating capacity in anticipation of sanction by the Licensing Authority, the Licensing Authority may inspect the theatre and give further directions as may be appropriate to avoid abuse or misuse of reduced seating capacity. This direction is in accordance with the judgment of the Division Bench of this Court in WP No.9640 of 1984 dated 30-10-1984.

(6) The licensee shall not be entitled to enhance the rates of admission which has been already sanctioned by the Government vide G.O. Ms. No.218 dated 14-7-1995 and any further enhancement by the licensee will be in accordance with further sanction by the competent authority.

(7) It is further directed that the Licensing Authority has to consider any application filed at any time seeking reduction of seating capacity subject to the provisions of Rule 10A without any restriction as to cut off date. And

(8) There shall be no order as to costs.