(1982) 02 PAT CK 0005

In the Patna High Court

Case No : C.W.J.C. No. 1157 of 1981 (R)

Natraj Cinema and Another APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 05-02-1982

Acts Referred:

Bihar Cinemas (Regulation) Act, 1954 — Section 10, 3, 4, 5, 6
Constitution of India, 1950 — Article 14, 19

Citation : (1985) 33 BLJR 1

Hon'ble Judges : Satyeshwar Roy, J;S.Shamsul Hasan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S. Shamsul Hasan, J.—The petitoners desire a declaration that the proviso to Rule 27 of the Bihar Cinemas (Regulation) Rules, 1974 (hereinafter referred to as the rules'') is ultra vires the Bihar Cinemas (Regulation) Act, 1954 (hereinafter referred to as''the Act'') and pray for issuance of mandamus directing the respondents concerned to recall or to cancel letter No. 3114 dated 12-5-1981 (annexure''1''), by which they have fixed the rates of tickets chargeable bv the petitioners for entry into various classes in their cinema. A direction is further sought that annexure ''1'' should be quashed on the ground that the rates of tickets have been fixed arbitrarily, without taking into consideration the cost of maintenance and operation of the cinema hall, and without applying the principle of natural justice, since the petitioners were not afforded an opportunity of being heard lastly, the impugned proviso and the direction given thereunder by annexure ''1'' is violative of Article 19(1)(g) of the Constitution as it imposes unreasonable restriction upon the petitioners in carrying on their business and trade and is also violative of Article 14 because the directions are discriminatory in natures since unequals have been made equal.

2. Petitioner No. 1 is the partnership firm carrying on the business of exhibiting cinematographic films in the town of Jamshedpur and owns a hall known as

''Natraj'' petitioner No. 2 is one of the five partners of the said Firm. The said firm has been carrying on the business of exhibiting cinematographic films since 1967 under the licence granted under the Act. It is averred that since the inception of the business the petitioners have throughout fixed the rates of entrance into the cinema for various shows in different classes and have revised the rates off and on, the last revision being on 1-12-75. It may be mentioned here that the rates so fixed are subject to levy of tax under the Bihar Entertainment Tax Act, 1948, which, at present, is 110 per cent of the basic rates. The revised tariff as it stood on December 1, 1957 is as follows:

Class	Admission Fee Rs.	Entertainment Tax Rs.	Total Rs.
D/C	2.72	3.00	5.72
B/C	2.27	2.50	4.77
1st	1.77	1.95	3.72
2nd	1.22	1.35	2.57

It will be relevant to state here that the hall, in which the petitioner firm exhibits the films is fully air-conditioned, there being in the State of Bihar air-cooled halls and ordinary cinema halls, which are neither air-conditioned nor air-cooled. It will also be relevant to state that the cost or running an air-conditioned hall is very much higher than air-cooled hall, which is higher than ordinary hall. These facts have been stated in the petition and have not been controverted by the State. It is also averred petition that in view of all round inflation the petitioner firm announced a further increase in the rates of admission into the hall from 31-7-81, an information in regard to which had been posted on the notice board in the cinema on June 30,1981, for the information of the general public. The proposed increase was as follows:

Class	Admission Fee Rs.	Entertainment Tax Rs.	Total Rs.
D/C	3.00	3.30	6.30
B/C	2.50	2.75	5.25
1st	2.00	2.20	4.20
2nd	1.50	1.65	3.15

Pending implementation of the above rates respondent No. 3 circulated a copy of the order of respondent 1 and 2 fixing the maximum rate for admission into cinema houses and requiring compliance with the same by the petitioner firm. Communication was sent by respondent No. 3 contained in his memo No. 2394 dated 8-7-81 which is Annexure ''1'' to the writ petition its official. English translation being Annexure ''2''. The petitoners are thus aggrieved by the steps taken by respondent Nos. 1, 2 and 3.

3. It will be proper here to set out the relevant provisions of the Act and the Rules. Section 9 of the Act reads as follows ;-

(1) The State Government may by notification in the official Gazette, make rules for the purpose of carrying into effect the provisions of this Act-

(2) In particular, and without prejudice to the generality of the foregoing power, such-rules may provide for-

(a) Prescribing the terms, conditions and restrictions, if any, subject to which licences may be granted under the Act;

(b) regulating cinematograph exhibitions for securing the public safety ;

(c) regulating the means of entrance and exit at places licensed under this Act and providing for the prevention of disturbances thereat;

(d) regulating or prohibiting the sale of any ticket admission, by whatever name called, to a place licensed under this Act;

(e) delegation of the power of hearing appeals under Sub-section (3) of Section 5 and Sub-section (2) of Section 8 to any officer subordinate to the State Government; and

(f) prescribing the time within which and the conditions subject to which such appeal may be preferred.

(3) All rules made under this Act shall be published in the official Gazette, and on such publication shall have effect as if enacted in this Act.

The relevant Sub-clause (d) of Sub-section (2) of Section 9 of the Act. The relevant rule is Rule 27 of the Rules, which run as follows ;-

(1) Admission to the film exhibition in the cinema house shall be on a valid ticket or pass issued by the licensee or his duly authorised agent within the licensed premises ;

Provided that the licensing authority may, with the approval of the State Government, regulate the rate of admission-fee to various classes in the cinema house and the same shall, along with the taxes thereon, be printed on the face of the ticket.

(2) The number of tickets issued and the number of complimentary passes taken together, shall not exceed the number of seats available in each class in the cinema house in terms of the licence.

4. According to the preamble of the Act its purpose is to regulate exhibition of films in the State of Bihar by means of cinematograph. u/s 3 exhibition is restricted to the place which is licensed. Section 4 indicates the authority who shall grant licence and Section 5 prescribes the condition which must be fulfilled before a licence could be granted. One of the conditions is that the rules must be substantially complied with. Adequate precautions have been taken in regard to the place licensed for exhibition and safety of persons attending the shows. Sub-section (2) of Section 5 provides that licensee could be granted subject to the observance of the foregoing provisions and the control of the State Government and on such terms and conditions, and subject to such restriction as the licensing authority may determine. An appeal is provided on refusal of a licence. Section 6

empowers the State Government or the District Magistrate to suspend exhibition of a film from being publicly exhibited if it is likely to cause breach of the peace. It further states the steps to be taken when such an order is passed. Section 7 provides penalty for non-observance of any of the provisions of the Act or the Rules or the conditions imposed and Section 8 provides for revocation or suspension of the licence. Section 10, .inter alia, empowers the State Government to exempt, subject to such conditions and restrictions as it may impose, any cinematograph exhibitions or class of cinematograph-exhibitions from any of the provisions of the Act or of any rules made thereunder.

5. The Rules framed under .Section 9 is called the Bihar Cinema (Regulation) Rules, 1974. It was enforced on 11-10-1974 and has been duly published as required by Section 9(3) of the Act. As stated above, relevant rule is 27, particularly proviso to Sub-rule (1) thereof. Rules 27 has already been set out above. The rest of the rules are entirely regulatory and they deal with the procedure for construction of a cinema house i.e. locations and approval of building plan, time-limit of construction, and its extension, grant of licence and the period of validity of the permanent licence inspection, licence for occasional exhibition, general suitability of the building, power to issue direction by the State Government, storage of films, appointment of operators, electrical installations, emergency lighting, display of posters and restriction and control on -sale of tickets by prohibiting sale at higher rates and by unauthorised agencies as a safeguard against blackmarketing, apart from the controversial Rule 27.

6. Reading the entire Act, including the purpose for its enactment. I have no hesitation in holding that Section 9 of the Act empowers the appropriate authority to frame rules for fixing the rate of admission to various classes in a cinema house as has been done by the proviso to Rule 27 (1) of the Rules. The power sought by the State Government depends on the interpretation of Section 9 (1) (d) of the Act and the interpretation of the words ''regulating'' or "prohibiting'' in that clause. For the reasons to be stated hereinafter, I have no hesitation in reiterating that the words "regulating" or prohibiting the sale of any ticket or pass for admission includes fixing the rates of tickets.

7. The meaning, of the word ''regulate'' according to Shorter Oxford Dictionary, is "to control, govern or direct by rule or regulation''. It also means ''to subject to guidance or restrictions, it is manifest, therefore, that the word ''regulate'' has a very wide connotation and is capable of covering a wide spectrum of action, The power to regulate carries with it full power over the things, subject to regulation, and the power is clearly plenary over the entire subject and implies power to rule direct and control but at the same time involves the adoption of real guiding principle to be followed. It also includes power to restrain also of the limitations and restrictions. When power is granted to regulate a particular business, it implies the right to prescribe and enforce such reasonable rules and regulations as may be deemed necessary and proper, for conducting the business in an orderly manner. Its use in the enactment concerned does not warrant any narrow

interpretation. In Maxwell on the Interpretation of Statutes, 12th Edition, in Chapter 6 at page 137 quoting Lord Cranworth it is stated=I never understand.

What is meant by evading an Act of Parliament- Either you are within the Act or you are not, if you are not within it, you are right; if you are within it, the course is clear, and it cannot be said that you are not within it because the very words of the Act may not have been violated. On the other hand, there is no doubt that ''the office of the Judge is, to make such construction as will suppress the mischief, and advance the remedy, and to suppress all evasions for the continuance of the mischief.

It is further stated:

This manner of construction has two aspects-one is that the courts, mindful of the mischief rule, will not be astute to narrow the language of a statute so as to allow person within its purview to escape its net. The other is that the statute maybe applied to. the substance rathar than the mere form of transactions, thus defeating any shifts and contrivances which parties may have devised in the hope of thereby tallying outside the Act.

It has been held in the State of Maharashtra v. Himmatbhai Narbharam Rao AIR 1970 S.C. 1163. as follows:

....Restriction imposed upon the right of an owner of a carcass to dispose it of in the manner indicated in the Act, being enacted solely in the interest of the general public, cannot be deemed arbitrary or excessive merely because they involve the owner into a small financial burden. Under the Constitution a proper balance is intended to t>e maintained between the exercise of the right conferred by Article 19(1) (f) and (g) and the interests of a citizen .in the exercise of his right to acquire, hold or dispose of his property or to carry on occupation, trade or business. In striking that balance the danger which may be inherent in permitting unfettered exercise of right in a commodity must of necessity influence the determination of the restrictions which may be placed upon the right of the citizen to the commodity....

In the context of the instant legislation, considering that exhibition of cinematographic film has become an important feature of the civic life of any city it provides all steps necessary to ensure that the interest of general public, it safety and comforts are not subjected to any inconvenience or hazard. The public is not subjected to any clandestine activities of undesirable elements, both external and internal that may lead to detrimental exploitations. While it is true that it is incumbent upon the State, exercising the power of regulating a particular trade and business, to ensure that the organisation, which is being subjected to its interference, ordinarily does not incur commercial trade loss nor does it mean an interference to that extent with the commercial activity of a person or an organisation, it is obviously the duty of the Mate to see that the commercial activity does not lead to exploitation of those for whose entertainment or benefit commercial activity is meant. Subject to this, the power in my view, is wide and no narrow meaning can be given to the word ''regulate''. By use of the word ''prohibiting'' along with ''regulating it is clear that the only restriction is that the government (sick) should not be of character that will lead to completey prohibiting the commercial activity. That can be done only under the power to prohibit a commercial activity. It does not emanate from the word ''regulating''. The word ''prohibiting'' has a connotation of its own and such rule can also be framed with which we arc concerned here. I am satisfied, therefore, that the word ''regulate will include fixation of rates of entry to the exhibition of cinematographic films subject to the condition that such fixation bears a nexus with the purpose of the concerned trade and business. It may be stated that some hardship may be caused but on the whole it is a beneficial measure to subserve widespread social need.

8. It cannot be said that the price of cinema tickets could not be prescribed by a specific provision in a statute and there is also no constitutional or statutory bar to such a fixation. If this could be done there seems to be no reason why it should not be held that the rule making authority was justified in framing Rules to regulate the rate of admission to various classes in a cinema house in exercise of the wide power conferred by Section 9(1)(d) of the Act. The proviso to Rules 27 of the Rules, therefore, is not ultra vires the Act, since Section 9(1)(d) of the Act endows the rule making authority to frame rules for fixing rate of admission to an exhibition of a cinematographic film. The rule clearly, therefore, does not travel beyond the scope and purpose of the Act. It will be useful to refer here to the enactment controlling the letting out of building on rent by the landlords. In the Bihar Buildings (Lease, Rent and Eviction) Control Act the rate of rent of building that can be charged by a landlord has been fixed to be proportionate to the tax payable by him to the local authority. It is not open to a landlord to charge ex-proprietary rent from a tenant not the rent can be enhanced even by agreement beyond the fair rent, even ;though the landlord may have constructed the building as a commercial venture for profit having made large investment.

9. The submission that the relevant rule itself, as framed is hit by Article 19(1)(g) of the Constitution, being a unreasonable restriction, has to be examined. It has been held in Oudh Sugar Mills Ltd., etc. Vs. Union of India (UOI) and Others, . that "not only the law restricting the freedom should be reasonable, the orders made on the basis of that law should also be reasonable. ...", I, therefore, feel that it is not necessary to go into the unreasonableness or otherwise of the rule itself. The justifiability of the action of the Government in issuing Annexure ''I'' can be examined on its own. For reasons to be stated hereinafter I have no hesitation in holding that the action of the authority in issuing Annexure T is unreasonable from the procedural stand point. Undoubtedly, the powers conferred have been improperly used by issuance of Annexure ''1'' I have already stated earlier that the rates of entry into a cinema were revised on 1-12-1975 and the rates were further sought to be revised by increase from 31-7-1981, information regarding which had been posted on the notice board by the petitioner on 30-6-1981. In Annexure ''1'' it is stated that in pursuance of the

Rule 27 of the Rules, different cinema owners had been requesting through the District Magistrate to increase the rates of admission and while admitting therein that there is an increase in prices of all things it has become necessary to consider the request of the cinema owners, still the impugned rates had been fixed. The cinema owners all over the Stats have been ordered to rectify the rates of their tickets accordingly. Copies of Annexure''1'' were sent to the authorities concerned. The facts stated above clearly indicate that the rates have been fixed in an arbitrary manner. No guidelines have been followed and no basis for fixing the aforesaid rates have been stated. The guidelines that are apparent from the enactment itself have apparently not been followed. It is neither clear from Annexure ''1'' nor has it been stated by way of an affidavit in this Court as to what factor weighed with the Government in coming to the aforesaid decision, It is not clear whether the factors like expenses incurred in maintaining and running cinema or its construction have been considered. It is also apparent that the cinema owners were not given an opportunity to explain their point of view either by the licensing authority or the Government. This action was in complete violation of the rule of natural justice.

10. The petitioners had announced a particular rate of increase but were suddenly saddled with Annexure ''1''. The action of the licensing authority and the State cannot but restruct the reasonableness of their action. The Government by fixing the rates, as mentioned above, has effected reduction in the rates already fixed by the cinemas. For example, admission fee in 1975, inclusive of tax in dress circle of the petitioners'' cinema was Rs. 5.72, which has been reduced to Rs. 5.25. This action of the licensing authority has reduced the welfare legislation to a mockery. If sufficient care had been exercised and important factors considered and proper procedure followed, a situation like this would not have arisen. A prayer for increase of rate by cinema owners has resulted in its reduction.

11. Power has to be exercised in a reasonable and rational manner keeping in view the over all interes of the commercial venture and its effect on the general public. Both parties have to work under certain reasonable restriction. It should always be remembered that fixing of rates arbitrarily and without following the rules of natural justice may lead to stiffling of a commercial venture and is thus, as undesirable as urestricted right to a commercial venture to offer its commodity at prohibitory rates leading to mala fide exploitation. The guidelines are inherent and obvious from the very purpose and scope of the enactment.

12. Certain guidelines have been laid down by the Supreme Court in its numerous decisions on the question of reasonableness. They have all been set out in Pathumma and Others Vs. State of Kerala and Others, . For the purpose of considering the action of the licensing authority in issuing Annexure ''1'' it has to be examined whether the action of the authority is abitrary and in excess of the power conferred by the statute, considering its intention, and whether the action strikes a just balance between the restriction imposed and the social control

envisaged and the object which is sought to be achieved. I have no hesitation in holding that by issuing Annexure T a just balance has not been struck between the action taken and the social control envisaged and I am satisfied that Annexure''1''does not really fulfil the object of the statute. The action of the licensing authority in fact frustrates the very object which is sought to be achieved by the enactment.

13. Another aspect of the matter is that the rates of cinema tickets, which have airconditioning, have been clubbed together with the cinemas which have only air cooling system. It cannot be disputed that the cost of running an air-conditioned cinema is much higher than an air-cooled cinema. This situation is not disputed by the State and such step like clubbing two different classes of cinemas and one rate of admission is clearly not envisaged under the Act.

14. Learned Counsel for the petitioner relied on Durga Chand Kaushish and Another Vs. Union of India and Others, . This decision does not apply because Section 16 of the Cinematograph Act, 1952, and Rule 45 of the Delhi Cinematograph Rules, 1953, are not the same as Section 9(1)(d) of the Act and Rule 27 of the Bihar enactment. In Delhi enactment the rate of admission had to be revised by the licensee but with the approval of the Lt. Governor of Delhi which was reduced by the Lt.-Governor directly by 10 per cent.

15. Learned counsel for the State relied on the State of Punjab and Another Vs. Deepak Theatre, Dhuri, . I am in respectful agreement with the decision, of the Punjab case cited above, in regard to the scope of the word ''regulation''.

16. To sum up, I have no hesitation in holding that while the State Government has power to frame rules to fix the rates of admission to various classes in a cinema house and Rule 27 of the Rules, therefore, is not ultra vires Section 9(1)(d) of the Act, however for the reasons stated above Annexure T cannot be sustained in view of the unreasonableness of the order made on the basis of the rule in question.

17. In the result, the application is allowed, as indicated above, and Annexure ''1'' is quashed. Let an appropriate writ be issued. There will be no order as to costs.

Satyeshwar Roy, J.

18. I agree.

