

(1987) 07 BOM CK 0014

In the Bombay High Court

Case No : Writ Petns. No's. 1331 of 1987 and 2471 of 1986

Santosh Chitra Mandir

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 30-07-1987

Acts Referred:

Bombay Cinemas (Regulation) Act, 1953 — Section 9
Constitution of India, 1950 — Article 14, 19(1)(g), 300A

Citation : (1991) MhLj 676

Hon'ble Judges : H.W. Dhabe, J;H.D. Patel, J

Bench : Division Bench

Advocate : V.R. Manohar and A.V. Mohta in W.P. No. 2471 of 1986 and W.P. No. 1331 of 1987, for the Appellant; N.M. Gadkari, Asstt. Government Pleader, in W.P. No. 1331 of 1987, B.T. Patil, Asstt. Government Pleader, For respondents Nos. 1 and 2, S.R. Deshpande, in W.P. No. 2471 of 1986, for the Respondent

Final Decision : Dismissed

Judgement

H.W. Dhabe, J.—Persistent efforts are being made by the owners of the permanent cinemas in Mofussil Towns and Villages of the State to avoid competition by the Touring cinemas in their business, by challenging the licences granted or to be granted to the Touring cinemas on various grounds in this Court. In one such writ petition i.e. Writ Petition No. 1522 of 1986, the challenge was on the ground that the amended Rule 101 cannot be enforced since the Notification by which the said Rule was framed, was not laid before the State Legislature by the State Government. The said challenge in the aforesaid case was rejected by our judgment rendered on 19-12-1986. (See Pannalal Nemasa Jain Vs. State of Maharashtra and Others,). In these two writ petitions which can be conveniently disposed of by this common judgment, the challenge to the licences to the Touring Cinemas is based upon the construction of Rule 101 (3)(c) of the Maharashtra Cinemas (Regulation) Rules, 1966 (for short the "Rules") as also upon the vires of that Rule itself on the ground of infringement of Article 14 of the Constitution of India.

2. Briefly the facts are that the petitioners in these two writ petitions are the owners of permanent cinemas. The permanent cinema of the petitioner in Writ Petition No. 1331 of 1987 is situated at Deulgaon Raja in Buldana District, and the permanent cinema of the petitioner in Writ Petition No. 2471 of 1986 is situated at Malegaon in Akola District. The respondent No. 3 in each writ petition is a person to whom touring cinema licence is either granted or to be granted by the Licensing Authority. A perusal of the prayer clauses in these writ petitions shows that the petitioners are challenging clause 4 of the Amending Rules of 1986 as violative of Articles 14, 19(1)(g) and 300-A of the Constitution of India and alternatively, on the construction of the Amended Rule 101(3)(c), the relief claimed is that no touring licences to the Touring Talikes should be granted till the population of each of these villages reaches 20,000/-. It may be seen in this regard that according to the last Census of 1981 the population of Deulgaon Raja is 14,088 and the population of Malegaon is 10,700. The relief, therefore, claimed is that no touring licence can be granted in Deulgaon Raja and Malegaon in which there is already existing one permanent cinema belonging to the petitioners.

3. It is not necessary to refer to the claims on merits because the two contentions urged in these petitions are -

a) That Rule 101(3)(c) of the Rules as amended by clause 4 of the State Government Notification dated 9-7-1986 is violative of Article 14 of the Constitution of India, and

b) to save from the vice of discrimination the reasonable construction of Rule 101(3)(c) should be that one touring cinema would be permissible thereunder only after the population reaches 20000. the first 10000 of the population being required to be excluded.

4. It may be seen that the grant of licences to exhibit cinemas is governed by the Bombay Cinemas (Regulation) Act. 1953 (for short the "Act") and by virtue of section 9 which confers the powers on the State Government to make Rules, the Rules referred to above are framed by the State Government. It may be seen that in clauses (f-1), (f-2) and (f-3) of Rule 2 of the Rules the expressions "permanent cinema" "quasi-permanent cinema" and "touring cinema" respectively are defined. It would appear from the above definitions that the distinction is based upon the permanent, semi-permanent or temporary structure built or allowed to be built for exhibiting films by the persons concerned. For the purposes of these writ petitions the only Rules which are relevant are Rules 100 and 101 and more particularly, Rule 101 of the Rules. Rule 100 of the Rules is procedural in nature as it deals with the requirement of the accompaniment to the application to be made for the grant of a licence. It is Rule 101 of the Rules which deals with the actual question of grant of licence and it is, therefore, necessary to consider its scope and ambit in detail.

5. It may then be seen that the original Rule 101, was enacted on 12-7-1966. It

was thereafter amended on 18-6-1970, 21-2-1978 and by the present amendment on 9-6-1986. Under the original Rule 101, it was entirely in the discretion of the Licensing Authority to grant licences for permanent cinema, quasi-permanent cinema or touring cinema but in the case where there was already a permanent or a quasi-permanent cinema in the place in question, no licence for touring cinema was to be granted except on occasions such as fairs and melas etc. as provided in the proviso to the said Rule.

6. By the amendment of Rule 101 under the Government Notification dated 18-6-1970, it was provided that there should be no quasi-permanent or touring cinema in the cities of Bombay, Poona, Nagpur and Solapur. No quasi-permanent cinemas were also allowed in cities and towns having a population not exceeding one lac, if there were already permanent cinemas in the proportion of one to every ten thousand population. If the population of a city or town exceeded one lac, quasi-permanent cinemas were allowed in the population of one cinema to every twenty thousand population in excess of one lac. As regards the touring cinemas no licences were to be granted in the cities and towns having a population of thirty thousand and above. However, in the towns having a population of less than thirty thousand, quasi-permanent and touring cinemas could be allowed according as the permanent cinemas or quasi-permanent cinema would fall short of the proportion of one to ten thousand population. If there were no permanent or quasi-permanent cinemas, the licences for any number of touring cinemas could be granted.

7. The next amendment in Rule 101 was by the Government Notification dated 21-2-1978. A new Rule 101 was substituted in place of the old Rule. Sub-rule (1) of Rule 101 dealt with grant of licences to the permanent cinema and it would appear from the said sub rule that there was no ceiling placed upon the number of licences to be granted to the permanent cinema. Sub-rule (2) of Rule 101, dealt with quasi-permanent cinema. Clause (b) of sub-rule (2) provided that no quasi-permanent cinemas were to be allowed in the Cities of Bombay. Pune. Nagpur, Solapur and Kolhapur, and in cities or towns having a population not exceeding one lakh, if in any such city or town there was already a permanent cinema in the proportion of one to every ten thousand population. However, in case of any city or town having a population exceeding one lakh, quasi-permanent cinema was allowed in the proportion of one cinema for every twenty thousand population as was in excess of one lakh. Sub-rule (3) dealt with the touring cinemas. Clause (a) of sub-rule (3) conferred discretion upon the Licensing Authority to grant a Licence for a touring cinema to the applicant on such terms and conditions and subject to such restrictions as the licensing authority would determine. Clause (b) of sub-rule (3) provided that no touring cinema would be allowed in the cities of Bombay, Pune, Nagpur, Solapur and Kolhapur and in other cities and towns having population of 30,000 and above. Sub-clause (c) of sub-rule (3) then provided that in towns having a population of less than thirty thousand, with two or more permanent or quasi-permanent cinemas, no touring cinema was to be allowed. However, in case of such towns

having a permanent or quasi-permanent cinema, one touring cinema was to be allowed if its population was more than fifteen thousand. Clause (d) of sub rule (3) provided that any number of touring cinemas could be allowed where there were no permanent or quasi-permanent cinemas.

8. It is this Rule 101, as it existed after the amendment of 21-2-1978 which is amended by clause 4 of the Government Notification dated 9-6-1986. By the above amendment new clause (b) and (c) of sub-rule (3) of Rule 101 are substituted. For the sake of convenience the said amended clauses (b) and (c) of sub-rule (3) of Rule 101 are reproduced below:

"101 (3)(b) No touring cinema shall be allowed in the cities of Bombay, Pune, Nagpur, Solapur, Kolhapur and Aurangabad including other cities and towns having a population of fifty thousand and above."

"101 (3)(c) In towns having a population of less than fifty thousand, with five or more permanent or quasi-permanent cinemas, no touring cinema shall be allowed. However, in the case of such town having only one permanent or quasi-permanent cinema, one touring cinema may be allowed for the population of every ten thousand."

9. It is clear that after the present amendment, there was no change so far as the grant of licence to permanent cinemas or quasi-permanent cinemas was concerned. As regards grant of licences to touring cinemas, the change made in clause (b) was in addition to the principal cities mentioned therein, city of Aurangabad was included and in regard to the other cities and towns the ceiling of population was fifty thousand and above instead of thirty thousand and above. Thus as per the amended clause (b), no touring cinema could be allowed in a city and town having a population of fifty thousand and above. The amended clause (c) of sub-rule (3) of Rule 101 provided that in towns having a population of less than fifty thousand with five or more permanent or quasi-permanent cinemas no touring cinemas could be allowed. Prior to its amendment, the prohibition was that in towns having a population of less than thirty thousand, with two or more permanent or quasi-permanent cinemas, no touring cinema could be allowed. Thus apart from the ceiling of population, the criteria of number of permanent or quasi-permanent cinemas has also changed under the amended clause (c) of Rule 101(3) presumably because of the higher ceiling of population as provided under the aforesaid amended Rule. It is then provided in the amended clause (c) of sub-rule (3) of Rule 101 that in case of such town having a population of less than fifty thousand with only one permanent or quasi-permanent cinema, one touring cinema could be allowed for the population of every ten thousand.

10. It is really this part of the amended clause (c) of sub-rule (3) of Rule 101, which, according to the petitioner, has presented some difficulty about its construction and which is the subject matter of his challenge under Article 14 of the Constitution of India. As already pointed out, the construction canvassed on behalf of the petitioners of the above part of clause (c) of sub-rule (3) of Rule

101, is that in a town having a population of less than fifty thousand if there is one permanent or quasi-permanent cinema then reading the said clause (c) reasonably a touring cinema can be permitted only if the population is twenty thousand as the first ten thousand according to the petitioners, needs to be excluded.

11. Before we proceed to construe clause (c) referred to above, we may dispose of the submission made on behalf of the petitioners that the above contention is supported by the State Government itself in its return filed in the previous Writ petition No. 1522 of 1986 which is already referred to by us at the outset. Reliance is placed upon para 7 of the return in which it is admitted on behalf of the State Government that no other talkies would be permitted to run unless the population has increased up to 10000 excluding the first 10000 i.e. upto 20000. It is further stated that another license could be granted to a touring talkies in a town where the population exceeds 10000, by further 10000.

12. In our view, even assuming that the above construction of clause (c) in question of the amended Rule 101(3) supports the construction sought to be canvassed by the petitioners before us, the construction placed by the State Government does not bind us. The Learned Counsel for the petitioners has urged before us that at any rate the above averments would show the intention of the State Government in framing the rule. As regards the canon of construction in this regard, it is most pertinent to see that in the case of *Kumari Suneeta Ramchandra Koyalamudy Vs. State of Maharashtra and Another*, the Supreme Court has observed that the rule of interpretation adopted by the High Court that in case there is any doubt about the interpretation to be placed on the rules, the interpretation placed by the authorities should be accepted because their interpretation was entitled to preference as they knew their intention best is unusual and novel. It has further observed that whatever may have been the intention of the Government, when such intention is translated into a statute or rule, whether the intention has been implemented or not can only be judged by the wordings of the particular provision of such statute or rule.

13. It is further a primary rule of interpretation that the intention underlying the rule should be gathered from the rule itself or the scheme of the provisions of the Act and the rules, and ordinarily, the literal and grammatical meaning should be given to the rule unless it would be defeating the purpose or intention of the rule making authority. (See *Girdhari Lal and Sons Vs. Balbir Nath Mathur and Others*,). It is therefore, necessary to gather the intention of the rule-making authority from the relevant provisions of the Act and the rules themselves and then determine whether the literal or grammatical construction of the rule would defeat the said intention. The submission on behalf of the petitioner as regards the rule of construction to be adopted, therefore, cannot be accepted.

14. We have already referred to the history of Rule 101 in regard to the grant of licences. As already pointed out, the rule contemplated and dealt with three categories of cinemas viz., permanent, quasi-permanent and touring cinemas.

From the time of the original rule itself, it is clear that there is no restriction or ceiling placed by the Government upon permanent cinemas and the matter is left in the entire discretion of the licensing authority. As to the quasi-permanent and touring cinemas, it is clear that they are not to be allowed in particular cities of State like Bombay, Pune, Nagpur, Solapur and Kolhapur. However, so far as quasi-permanent cinemas are concerned, in cities and towns having a population not exceeding one lakh if in any such city or town there is already a permanent cinema in the proportion of one to every ten thousand population no quasi-permanent cinema was to be allowed. However, in the case of any city or town having a population exceeding one lakh, quasi-permanent cinemas would be allowed in the proportion of one cinema for every twenty thousand population as was in excess of one lakh. In other cases, quasi-permanent cinemas could be allowed and there was no ceiling upon them. As regards touring cinemas in the Rule as it existed under Notification dated 21-2-1978 no touring cinema was to be allowed in the cities or towns having a population of 30,000 and above. However, after the present amendment on 9-6-1986 clause (b) provided a ceiling of population of 50,000 and above for not allowing a touring cinema in a city or town. Apart from the cities of Bombay, Pune, Nagpur, Solapur and Kolhapur, Aurangabad was included in the cities in which no touring cinema was to be allowed. The Rule existing under Notification dated 21-2-1978 provided that if there existed two or more permanent or quasi-permanent cinemas, no touring cinema should be allowed. However, if in such a town was only one permanent or quasi-permanent cinema then one touring cinema could be allowed if population exceeded fifteen thousand. Thus under the aforesaid Rule if the population was below fifteen thousand, if there was one permanent or quasi-permanent cinema, no touring cinema was permitted. However, if there was no permanent or quasi-permanent cinema, then as per clause (d) any number of touring cinemas could be permitted.

15. It may be seen that by the present amendment under the notification dated 9-6-1986 only clauses (b) and (c) of sub-rule (3) of Rule 101 relating to grant of licences to touring cinemas are replaced. Thus clauses (a) and (d) of sub-rule (3) introduced as per the notification dated 21-2-1978 continued to be operative. Clause (d), therefore, would continue to operate in the sense that if there is no permanent or quasi-permanent cinemas, there is no restriction placed upon the power of the licensing authority to grant any number of licences to the touring cinemas. The matter in that case is left entirely in the discretion of the licensing authority to be exercised under clause (a) under which it can grant licence to a touring cinema on such terms and conditions and subject to such restrictions as it may determine.

16. It is clear from the reading of the present clauses (b) and (c) of sub-rule (3) of Rule 101 that the rule making authority has raised the ceiling of 30,000 to 50,000 so far as population of cities and towns are concerned. However, when the ceiling is raised to 50,000 the criteria of not allowing touring cinema on the basis of two or more permanent or quasi-permanent cinemas is also modified by

raising it to five or more permanent or quasi-permanent cinemas. In case there is only one permanent or quasi-permanent cinema, a provision is made in the present clause (c) of sub-rule (3) of Rule 101, that there should be touring cinema for the population of every ten thousand. It is thus clear that under the abovesaid present clause (c), after providing that no touring cinemas can be allowed in towns having population of less than fifty thousand with 5 or more quasi-permanent cinemas, the contingency for allowing touring cinemas is considered only in regard to a case where there is only one permanent or quasi-permanent cinema. The contingency where there are two to four permanent or quasi-permanent cinemas is not expressly covered by the present clause (c). It is this omission in the present clause (c) which is sought to be highlighted on behalf of the petitioners in either reading down the said clause (c) of Rule 101(3), to construe it in a manner so that it is only when the population reaches 20000 that there can be allowed thereunder one touring cinema or the wise for striking it down under Article 14 of the Constitution, on the ground that it is unintelligible, absurd, arbitrary and discriminatory.

17. In appreciating the above submission, it may be seen that the legislative intention from the above history of the rules is clear (hat where there are no permanent or quasi-permanent cinemas any number of touring cinemas can be allowed in the discretion of the licensing authority. As regards the towns having a certain population viz. at present below fifty thousand if there exists a particular number of permanent or quasi-permanent cinemas, five as in the present rule, no touring cinema is to be allowed, which would mean that if there are less than five permanent or quasi-permanent cinemas then a certain number of touring cinemas can be allowed. The question would be how many such touring cinemas can be allowed under the rules.

18. As regards the challenge on behalf of the petitioners under Article 14 of the Constitution of India, We do not think that the absence of specific provision about touring cinema in the present clause (c) when there exists in the town in question two to four permanent or quasi-permanent cinemas would render the said rule unintelligible, absurd, arbitrary or discriminatory. Even otherwise, if the construction is that in the absence of such express provision no touring cinemas are permitted under clause (c) and, therefore, no licences can be granted in such cases, it is the owners of the touring cinemas who would be adversely affected and not the petitioners who are the owners of permanent cinemas. In fact, that would be a matter in their favour. It would not, therefore, be open to the petitioners to challenge the validity of clause (c) on that ground. However, as we shall presently show, the basic assumption and underlying the challenge of the petitioners under Article 14 of the Constitution that since there is no provision covering the contingency, of allowing touring cinemas, where there exists two to four permanent or quasi-permanent cinemas, there is no power to grant licences to the touring cinemas in the said contingency is not correct and well-founded.

19. In this regard, we may point out that the main clause containing the power

to grant licences to the touring cinemas is clause (a) of sub-rule (3) of rule 101 under which discretion is conferred upon the licensing authority to grant licences to the touring cinemas upon such terms and conditions and with such restrictions as it may determine. Clauses (b) and (c) control its discretion in that regard by placing certain restrictions upon its discretion. Therefore, except to the extent its discretion to grant licences to the touring cinemas is controlled by the aforesaid clauses (b) and (c) or for that matter, any other provisions, the licensing authority has full discretion and authority to grant licences to the touring cinemas as it may deem fit. Mere absence of the provision, therefore, in clause (c) in regard to a case where there are two to four permanent or quasi-permanent cinemas would never mean that in such contingency it is not open to the licensing authority to exercise its own discretion which is conferred upon it under clause (a) to grant licences to the touring cinemas.

20. It is true that the discretion conferred upon the licensing authority under clause (a) cannot be exercised by it in an arbitrary manner because such a discretion is itself subject to the injunction of Article 14 of the Constitution of India. The licensing authority has thus to exercise its discretion of granting licences to the touring cinemas under clause (a) in a reasonable manner and upon some rational criteria. In exercising its discretion, the licensing authority may have to bear in mind the guidelines flowing from the scheme of clauses (b) and (c) themselves, particularly the guideline flowing from clause (c) that in towns having a population less than fifty thousand, no touring cinemas are allowed if there are five or more permanent or quasi-permanent cinemas and that if there is one permanent or quasi-permanent cinema then for every ten thousand the licensing authority can allow one touring cinema. Therefore, in granting touring licences in the cases where there are two to four permanent or quasi-permanent cinemas in the town in question, the licensing authority will have to exercise its discretion in a rational manner keeping in view the scheme of the above rules. Reading thus the scheme of sub-rule (3) of rule 101 as a whole, it cannot be said that clause (c) thereof is unintelligible, absurd, arbitrary or discriminatory and is thus infirm and liable to be struck down under Article 14 of the Constitution of India. The challenge under Article 14, therefore, deserves to be rejected.

21. Turning to the construction of clause (c) of rule 101(3), we fail to see how the interpretation should be that in case of one permanent or quasi-permanent cinema, the population must reach 20,000. The language of clause (c) of rule 101(3) is clear and does not warrant such construction. The exclusion of first 10,000 is thus not at all understandable. The submission is that the above clause (c) should be read down in the above manner in view of the absence of the provision therein for touring cinema where there exist two to four permanent or quasi-permanent cinemas in the town. We also fail to see how the purpose of the petitioners is served by construing the said clause in the above manner. The petitioners want to construe the said clause (c) in the above manner because they feel that if the said clause is construed in its literal sense, there would be

five touring cinemas in addition to one permanent or quasi-permanent cinema which would be contrary to the scheme of the above rules. Since the ceiling provided under clause (b) is of the five permanent or quasi-permanent cinemas in town whose population is 50,000 or more.

22. Reading the rule i.e. clause (c) of rule 101(3) in its natural and grammatical meaning, it is clear that in places having one permanent or quasi-permanent cinema, for each 10,000 one touring cinema can be permitted which would mean that if there is population above 40,000, but less than 50,000, the touring cinemas which can be permitted would be four only because if the population reaches 50,000, then in such places in view of clause (b), no touring cinema is allowed. As regards the contingency where two to four permanent or quasi permanent cinemas exist in the town having less than 50,000 population, the said contingency, as already stated, is not covered by clause (c) of rule 101(3) and therefore, there is full discretion in the licensing authority to grant as many licences to the touring cinemas in the aforesaid contingency subject to the mandate of Article 14 of the Constitution. It may be seen that clause (c) of rule 101(3) does not lay down any ratio as such correlated to the existence of the number of permanent or quasi permanent cinemas for allowing touring cinemas.

23. It is therefore, clear that if there are two to four permanent or quasi-permanent cinemas, it cannot be said that it is intended by the rule to provide the same ratio viz. one touring talkies for every 10,000. As held by us hereinbefore, the contingency of the existence of two to four permanent or quasi-permanent cinemas in allowing touring cinemas in the absence of any express provision relating thereto is left to the discretion of the licensing authority under clause (a) of rule 101(3) and the licensing authority has to take the decision in that matter by exercising its discretion in a reasonable manner consistent with the mandate of Article 14 of the Constitution and keeping in mind the guidance from the scheme of clauses (b) and (c) of rule 101(3) and the relevant provisions of the Act and the rules. The construction of clause (c) of sub rule (3) of rule 101 canvassed on behalf of the petitioners thus cannot be accepted.

24. It is however, not necessary for us to lay down any hard and fast rule for exercising the discretion in the case of towns having population of less than 50,000 with 2 to 4 permanent or quasi-permanent cinemas because such a contingency does not arise for consideration in the facts of the instant cases in which there is only one permanent cinema in the towns concerned having a population between 10,000 to 20,000. We do not think that the literal and grammatical construction of clause (c) of sub-rule (3) of rule 101 needs to be departed from for any of the reasons alleged on behalf of the petitioners. If the literal construction is adopted, then as per clause (c) of sub-rule (3) of rule 101, a licence for one touring cinema can be granted at Deulgaon Raja and Malegaon. In this view of the matter, the action taken or proposed to be taken by the Tahsildar in this regard would be correct and would have to be upheld.

25. In the result, the instant writ petitions fail and are dismissed with costs. Rule

discharged.