
(2002) 01 AHC CK 0147
In the Allahabad High Court
Case No : C.M.W.P. No. 1511 of 1995

Sitar Video Hall

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 23-01-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)
Uttar Pradesh Cinemas (Regulation of Exhibition by Means of Video) Rules, 1988 —
Rule 11(1), 13, 4

Citation : AIR 2002 All 146 : (2002) 1 AWC 542

Hon'ble Judges : U.S. Tripathi, J; Binod Kumar Roy, J

Bench : Division Bench

Advocate : S.K. Chaubey and K.N. Tripathi, for the Appellant; S.C., Ashok Mehta and K.S. Kushwaha, for the Respondent

Final Decision : Dismissed

Judgement

Binod Kumar Roy and U.S. Tripathi, JJ.—The petitioner Sitar Video Hall, which claims to be situate in Sakaldiha Bazar of the district Varanasi (now district Chandauli) and had constructed a Pacca Video Hall of bricks and mortar for exhibiting video films as per the requirement of Rule 27 (2) of U. P. Cinematograph" Rules, 1951, has come up with a prayer to quash the communication made by the District Magistrate, Varanasi vide his letter dated 30th April, 1994 (as contained in Annexure-4) that its application filed for grant of relaxation after giving proper thoughts has been disallowed. A further prayer has been made to quash the communication dated 4th January, 1995, made by the Government to the District Magistrate, Varanasi, as contained in Annexure-2 to the supplementary-affidavit intimating that in view of the fact that the required permanent building has not been constructed in terms of Rule 4 of the U. P. Cinemas (Regulation of Exhibition By Means of Video) Rules, 1988, nor it appears that there is chance of fulfilment of the requirements enumerated therein for lack of required space besides keeping in mind the public convenience and Government revenue, there does not appear to give any justification for

relaxation of Rule 13 of the Rules aforementioned. A prayer has also been made to declare Rule 11 (1) of the Rules as ultra vires.

2. Sri S.K. Chaubey, learned counsel appearing on behalf of the petitioner contended that Rule 11 (1) of the Rules ultra vires Article 19(1)(g) of the Constitution. In this context, he also placed reliance on a judgment rendered by the Hon'ble Supreme Court in M/s. Classic Video Hall a State of Punjab. JT 1993 (4) SC 227. He also contended that the reasons given for refusal to relax the Rules aforementioned are arbitrary and unreasonable and thus prayer Nos. 1 and 2 are fit to be granted.

3. The learned standing counsel Sri K.S. Kushwaha, appearing on behalf of respondent Nos. 1 and 2 and Sri Ashok Mehta, learned counsel appearing on behalf of respondent No. 3, who was impleaded vide Court's order dated 10th July. 1995, on the other hand, contended that there is no merit in the contentions of Sri Chaubey. In fact the petitioner's challenge to vires of Rule 11 was upheld by this Court as well as by the Hon'ble Supreme Court and valid reasons have been given in the impugned communications for refusal to the prayer for relaxation made. Sri Kushwaha pointed out that video films were screened in an old structure hall taken on rent by the petitioner as stated in paragraph 5 of the counter-affidavit which fact has not been denied in paragraph 8 of the rejoinder of the petitioner.

4. In reply, Sri Chaubey contended that in the earlier round, the vires to Rule 11 (1) of the Rules was not adjudicated and hence there is no bar to challenge the same.

5. Rule 11 (1) (i) of the Rules reads as follows :

"11. Other conditions for grant of licence.--(1) Licence shall not be granted for a video cinema if it is situated :

(i) within the limits of a local area already having a cinema in a permanent building or where the same is under construction."

6. According to Sri Chaubey, the learned counsel for the petitioner, the relevant pleadings in this context are in paragraph Nos. 38, 39, 40, 41A, 42 and 45, which read as follows :

"38. That a permanent cinema hall has been constructed by one Arun Kumar Jaiswal in partnership with some other persons. This cinema hall is known as Saraswati Chhavi Grah and was constructed after the petitioner's video cinema hall. Saraswati Chhavi Grah was granted licence after the petitioner had started exhibition of films through video. Saraswati Chhavi Grah is within a distance of one kilometre from the petitioner's video cinema hall. The petitioner had also applied for the grant of licence for exhibition of films but the same has been refused on the ground that licence for video cinema cannot be granted within 1-1/2 kms, of a permanent cinema as required under Rule 11 (1) of 1988 Rules in case population of the area is less than 50,000.

39. That the provisions of Rule 11 (1) of 1988 Rules are ultra vires arbitrary and unreasonable particularly in view of the pronouncement of the Supreme Court in Raja Video Parlour and Others Vs. State of Punjab and Others,

40. That it is noteworthy in 1951 Rules, there is no distance restriction for existence of two permanent cinemas. They can exist even at adjacent buildings. Thus, the requirement of Rule 11 (1) of 1988 Rules about the distance between a permanent cinema and a video cinema is wholly arbitrary.

41(a). That the petitioner was running video cinema from the year 1988, till August. 1993. Since the petitioner has been granted exemption from the requirement of Rule 4, the licence for exhibition of films is denied to him on the ground of his video cinema being situated within a distance of 1-1/2 kms. from the permanent cinema. Consequently the petitioner has not been running the video cinema since August, 1993 and is suffering financial loss.

42. That so far as distance restriction is concerned, the State Government while framing Rules, 1988, which has been commenced on 1.9.1988, it has specifically been mentioned in the explanation to Rule 11 that restriction contained under Rule 11 shall not be at all applicable to the video cinema permanent building which is already giving exhibition of films before commencement of these Rule and after amendment in 1989, the said explanation have been deleted by the State Government, therefore, it cannot be made applicable in the case of petitioner's video cinema.

45. That the Rules, 1988, having been framed under the Uttar Pradesh Cinemas (Regulations) Act, 1955 and the said Rule specifically mentions restrictions for the grant of licence to a cinematograph if it is within 200 metres radius of Raj Bhavan, Government Secretariat, the State Public Service Commission, Board of Revenue and from the recognised educational institutions, public hospital etc. The said restriction is in public interest. Beyond these restrictions no restriction can be Imposed by the licencing authority. Therefore, the distance restriction under Rule 11 (1) is not at all said to be in public interest, hence the same be declared as ultra vires."

7. The denials of respondent Nos. 1 and 2 in their counter-affidavit in this regard can be found in paragraph Nos. 24 to 32, which read as follows :

24. That the contents of paragraph No 38 of the writ petition are incorrect hence denied. It is stated that the petitioner's Sitar Video Hall is a travelling Video Cinema. Under Rule 11 (2) of the U. P. Video Rules, 1988, a travelling Video Cinema shall not be licensed within the radius of two kms of a cinema in a permanent building. The version of the petitioner that his application for licence under Rule 11 (1) of Video Rules, 1988, has been refused is wrong. The petitioner's is a travelling video cinema and he did not present any such applications under Rule 11 (1).

25. That the contents of paragraph No. 39 of the writ petition are incorrect hence

denied. It is stated that the petitioner had challenged Rule 11 (2) of the U. P. Cinema (Regulation of Exhibition by means of Video) Rules, 1988 to be declared ultra vires by filing Civil Misc. Writ Petition No. 13556 of 1991 connected with Civil Misc. Writ Petition No. 29544 of 1991 in the Hon''ble High Court, Allahabad, but his writs were dismissed by the Hon''ble High Court by the judgment dated 16th July, 1993. in the aforesaid judgment the Hon''ble High Court did not accept the contention of the petitioner challenging the vires of the Video Rules of 1988. Against the said Judgment of the Hon''ble High Court dated 16th July. 1993, the petitioner filed SLP in the Hon''ble Supreme Court of India but the Hon''ble Supreme Court also in consistent with the judgment of the Hon''ble High Court, Allahabad, did not interfere in the matter and consequently the petitioner's SLP was also dismissed. Hence the petitioner's contention is baseless.

26. That the contents of paragraph No. 40 of the writ petition are incorrect hence denied. It is stated that the Government is empowered to make different Rules for different kinds of entertainments. Hence Rule 11 (1) of U. P. Video Rules is justified and the petitioner's contention is based on misconceptions.

27. That the contents of paragraph No. 41 of the writ petition are incorrect hence denied. As stated in para 11 above that the reasons for rejecting the application dated 6.10.1993 of the petitioner was served to him vide Government Order No. 173/11-MK-95-XXX-EB4 (21) 93, dated 31.1.1995. Hence the action of serving him the reasons for rejecting his application dated 6.10.1993 has now been completed.

28. That the contents of paragraph No. 41 (repeated) of the writ petition are incorrect hence denied. It is stated that the petitioner has not been granted exemption from the requirements of Rule 4 of U. P. Video Rules, 1988, hence there is no question of running the cinema. The petitioner's Sitar Video Hall (Travelling Video Cinema) falls within the distance of two kms. From Saraswati Chhavlgrih (a permanent cinema) hence the petitioner's Sitar Video Hall cannot be granted licence.

29. That the contents of paragraph No. 42 of the writ petition are incorrect hence denied. The contention of the petitioner is untenable. The amended Rule 11 of 1989 will apply in the case of the petitioner.

30. That the contents of paragraph No. 43 of the writ petition are incorrect hence denied. Under Rule 17 of the U. P. Video Rules, 1988, the maximum number of seats shall not be more than 125 in a video cinema. Hence the video cinema shall be governed by the U. P. Video Rules. 1988 and not by the U. P. Cinematographs Rules, 1951.

31. That the contents of paragraph No. 44 of the writ petition are incorrect hence denied. It is stated that the petitioner's is a travelling video cinema which shall be governed by the U. P. Video Rules. 1988 and not by the U. P. Cinematograph Rules, 1951. Hence the contention put forward by the petitioner is irrelevant and baseless.

32. That the contents of paragraph No. 45 of the writ petition are incorrect hence denied. It is stated that the Government is empowered to make different Rules for different kinds of entertainments in public interest. Hence the provisions of Rule 11 (1) framed by the Government is quite in consonance with public interest, safety and convenience. Hence the petitioner's plea is liable to be rejected."

8. Respondent No. 3 has also repudiated the statements made by the petitioner in paragraph Nos. 69, 70, 71 and 72, which read as follows :

"69. That the contents of paragraph Nos. 38, 39 and 40 of the writ petition are misconceived and it is submitted that in case petitioner has never running a video cinema in a permanent building and in case petitioner wants to do the same, the petitioner must apply in accordance with the provisions of U. P. Cinematograph Rules, 1951.

70. That the contents of paragraph Nos. 41 and 42 of the writ petition are misconceived and denied and it is submitted that the petitioner was not running a video cinema in a permanent building on the enforcement of the Video Rules on 1st September, 1988. The fact remains, the petitioner was running travelling video cinema in a temporary building and was granted licence for the same for the period of 9.10.1989 to 8.4.1990.

71. That the contents of paragraph No. 43 of the writ petition itself denotes that the petitioner can be granted a licence for video cinema in a permanent building, but the same must be for a seating capacity for more than 125 persons and comply with the provisions of U. P. Cinematograph Rules. This condition of complying provisions of Cinematograph Rules makes the exhibition of cinema by means of video safe, convenience and removes the possibility of danger to the general public and safeguard the public interest.

72. That the contents of paragraph Nos. 44, 45, 46, 47 and 48 of the writ petition are misconceived and denied and it is submitted that the present writ petition is misconceived and the order passed by the authorities is perfectly in accordance with law."

9. The decision in Raja Video Parlour and others, relied upon by Sri Chaubey, was rendered in relation to fixation of maximum seating capacity of a video hall irrespective of the size of screen and striking out the Proviso to Rule 10 (3) of the Punjab Exhibition of Films on Television Screen through Video Cassette Player (Regulation) Rules, 1969.

10. In the Rule in question, there is nothing akin to the Proviso of the Punjab Rules. The Rule puts a reasonable restriction in the opening of a video hall in a permanent building in the same locality where there is also a cinema hall in a permanent building and cannot be held to be violative of Article 14 or 19(1)(g) of the Constitution.

11. From the assertions made in the counter-affidavits of the respondents, it is

clear that relaxing the Rules in favour of the petitioner would also mean putting the public convenience and public safety in jeopardy.

12. Also relevant in this regard is the finding recorded by this Court in the earlier writ petition filed by the petitioner, which reads as follows :

"We have thoroughly considered the various aspects of the case and we do not find anything on which basis it may be said that the restrictions contained in the Rules, specially Rules 11 and 15 are unreasonable and not in public interest.....

The Rules create a reasonable classification for putting restrictions contemplated there under which has a definite nexus with the purpose to achieve i.e., safety and convenience of the viewers."

13. For the aforementioned reasons, we reject the challenge of vires of the Rule in question.

14. Now we proceed to consider the remaining submissions. From the assertions made in the counter-affidavits filed by the respondents, it appears that the petitioner was not having any permanent building, though Sri Chaubey asserts that those statements are incorrect. However, the facts stated in the counter-affidavit, which have not been disputed, show that the petitioner's licence does not show that he was exhibiting video films in a permanent building besides it was for the first time after having lost before this Court and the Hon'ble Supreme Court, the petitioner started asserting for a permanent licence by relaxing the Rules.

15. Rule 4 of the 1988 Rules reads as follows :

"4. Requirement of a permanent building.--(1) There shall be an independent entrance on the public thoroughfare on which the site of such building abuts.

(2) The building shall be provided with open space of not less than 3 metres in width on any two sides, and open space of not less than 6 metres in width in the front for parking of vehicles. If the building is away from thoroughfare, the approach road shall not be less than 3 metres in width.

(3) The building :

(i) shall be well built, structurally safe and constructed of non-inflammable material ;

(ii) shall be sufficiently ventilated ;

(iii) shall have 1.6 metres wide verandah on anyone side of the doorways of the building ;

(iv) shall have at least one doorway per 50 seats and in any case not less than two fitted with door to open outwards and the size of the doors shall not be less than 1.95 metres in height and 1.34 metres in width ;

(v) shall have the normal height of the roof or its immediate covering from the floor shall not be less than 3.5 metres with electric installations fitted at a height of 2.75 metres ;

(vi) shall have the landings, doors, staircases, lobbies and corridors of not less than 1.34 metres in width.

(4) In case the auditorium is constructed on the first floor of a building, it shall have 1.6 metres wide verandah on any two sides with at least two stair-cases to ground floor on two different sides, out of which one should abut the main thoroughfare. The width of the stair-case shall not be less than 1.34 metres with 16 cms Riser and 25 cms Tread and there shall not be less than three and not more than 15 stairs at a stretch. The open space required under Sub-rule (2) shall, be provided on ground floor. The other requirements shall be the same as in the preceding sub-rules :

Provided that the consent of the occupier on the ground floor for the construction, if any, shall be obtained in case the auditorium is constructed on the first floor."

16. Obviously while framing the aforementioned Rules, the aspects touching the public safety and public convenience have been taken.

17. Sri Chaubey submitted that the petitioner has challenged the findings recorded in this regard in paragraph Nos. 3 and 6 to 9 of the supplementary-affidavit to the writ petition.

18. The paragraphs, referred to by Sri Chaubey read as follows :

"3. That it is worth mention here that the reasons stated in the order dated 4.1.1995 are either irrelevant or have been recorded without application of mind and without considering facts and law both.

6. That the reasons stated in the Impugned order dated 4.1.1995 regarding the ownership of the land upon which the petitioners' hall was built, has no relevance at all. It is because the said hall does not fulfil two conditions of Rule 4 the relaxation was prayed for by the petitioner and the same could be granted to the petitioner in accordance with law.

7. That the petitioner is ready to pay 125% entertainment tax, therefore, the question of revenue loss would not be attracted.

8. That all the reasons stated in para 2 of the order dated 4.1.1995 are misconceived and are the result of non-application of mind. The hall of the petitioner was closed since August, 1993.

9. That the State Government has not properly and legally considered the relief claimed by the petitioner for relaxation under Rule 13 of the 1988 Rules."

19. In the counter-affidavit of respondent Nos. 1 and 2 in this regard, following facts have been stated in paragraphs 36, 39 and 40 which read as follows ;

36. That the contents of paragraph No. 3 of the affidavit are incorrect hence denied. The cogent and valid reasons are given in the order dated 4.1.1995 indicating as to why the relaxation was not granted to the petitioner. Averment to the contrary made in this paragraph are factually incorrect and legally not tenable in the eyes of law hence denied.

39. That contents of paragraph No. 6 of the affidavit are misconceived hence denied. The petitioner has not only to conform with Rule 4 but is required to follow other Rules contained in the relevant Rules, 1988, for which the ownership of the building and land is irrelevant. Averment to the contrary made in this paragraph is legally misconceived. It is further stated that the State Government was well within his Jurisdiction in refusing the relaxation in respect of Rule 4 (2) and 4 (3) (iii) of the Rules. 1988. Assertion to the contrary are misconceived hence denied.

40. That the contents of paragraph No. 7 of the affidavit are incorrect hence denied. Under Rules the proprietor of a video cinema deposits the fixed weekly entertainment tax in advance. Hence the contention of the petitioner to pay 125% entertainment tax is not admissible."

20. Apparently, the statements made by the petitioner are bald. Even though we are not an appellate court, the petitioner has not brought on the record any map and photographs to show how the requirements mentioned in the Rule aforementioned has been met or can be met to a justifiable extent by the petitioner so as to claim relaxation. Thus, we do not see any merit in the submissions of Sri Chaubey.

21 . We also put on record that we were not called upon to express about the stand taken by respondent No. 3 in his counter that there is no site at present available as the landlord has taken back possession of the premises in June, 1995, which has been converted in a permanent building to use it as a doctor's clinic which has been denied by the petitioner.

22. Having found the submissions made by Sri Chaubey devoid of any substance, we dismiss this writ petition but in the peculiar facts and circumstances without any order as to cost.

23. Let a copy of this order be handed over within one week to Sri K.S. Kushwaha, learned standing counsel for its intimation to the authority concerned.