

**(1984) 10 KAR CK 0038**  
**In the Karnataka High Court**  
**Case No : W.P. No. 10017 of 1984**

Sree Vinayaka Enterprises

APPELLANT

Vs

District Magistrate.

RESPONDENT

**Date of Decision :** 08-10-1984

**Acts Referred:**

Karnataka Cinemas (Regulation) Rules, 1971 — Rule 49

**Citation :** (1985) 1 KarLJ 251

**Hon'ble Judges :** K. S. Puttaswamy, J

## **Judgement**

1. At Virthur village, Bangalore South Taluk, Bangalore District, the petitioner has constructed a permanent Cinema theatre in accordance with the terms and conditions of the No Objection Certificate granted thereto and the building plan approved thereto under the Karnataka Cinemas Regulations Act 1964 (hereinafter referred to as the Act) and the Rules made thereunder.

2. Addmittedly the approved building plan provided for installing 729 seats of three different classes on 217, 361 and 151 seats in conformity with which that number of seats were installed by the petitioner in the aforesaid theatre. On being satisfied with that and other requirements of the Act and the Rules, the District Magistrate, Bangalore (hereinafter referred to as the DM) issued a licence to the petitioner for exhibiting films which is being renewed from time to time.

3. On or about 30.3.1983, the petitioner applied to the D.M. for according his permission to reduce the seats from 729 to 351 of different classes as set out in his application (Annexure-B). On 16.6.1984, the D.M. has rejected the same on the sole ground that Rule 49 would be violated (Annexure-C). In this petition under Article 226 of the Constitution, the petitioner has challenged the said order of the D.M. and has sought for a mandamus to him to grant his application.

4. Sri B.G. Sridharan, learned counsel for the petitioner, contends that the D.M. in rejecting the application had acted illegally.

5. Sri H.L. Dattu, learned High Court Government Pleader, appearing for the

respondent, refuting the contention of Sri Sridharan sought to justify the impugned order.

6. In his order, the D.M. except stating that Rule 49 would be violated has not stated as to how the said rule would be violated and in what manner the same would be violated. The only merit of the order of the DM is its extreme brevity. In this view, I propose to examine the question without reference to the order made by the D.M.

7. The Act and the Rules do not expressly provide for increases or decreases of seats already installed in permanent theatres in accordance with the earlier approval granted thereto by the authority. But, still Sri Dattu contends that cases of increases and decreases in seats would fall within the purview of Rules 39 and 40 of the Rules.

8. Rules 39 and 40 deal with alteration of "cinema buildings". The term "alteration of buildings" in the context means structural alterations or modification in the existing building of a theatre and cannot by any stretch of imagination comprehend alterations, increases or decreases in the existing seating arrangements of the building. I have, therefore, no hesitation in rejecting this contention of Sri Dattu.

9. The heading of Rule 49 reads "Conditions regarding seating accommodation". An heading of a provision gives a clue in understanding that provision though that does not control its plain meaning. Rule 49 regulates the irreducible minimum requirements that should be provided in seating accommodation of a permanent theatre. Evidently, the minimum irreducible requirement provided by the rule making authority in the Rule on a technical examination are undoubtedly made in the interests of the safety and comfort of the public in general and the visitors in particular. So far as the irreducible minimum requirements that should be provided, neither the theatre owner nor the authority has any choice. If there is a violation of Rule 49, the licensing authority can refuse a licence and grant the same when there is compliance with the Rule and not otherwise. But, that is not the position in the present case. What the petitioner proposes to do is to reduce the number of seats and necessarily provide for more comforts in the theatre.

10. Rule 49 or any other provision of the Act or Rules do not prohibit the theatre owner from providing more comforts than the law itself insists as the irreducible minimum. If, in a permanent theatre in which seats have already been installed in conformity with Rule 49, there is necessary accommodation or floor area for increase of seats, there is no impediment for the D.M. to permit the increase of seats in conformity with Rule 49 of the Rules. Whether there can be an increase of seats or not in a particular theatre depends on the facts and circumstances of that case. A fortiori there is no impediment for permitting decreases in seats and thus enable the theatre owner to provide more comforts over and above the requirements of Rule 49 of the Rules.

10. As to why the petitioner proposes to reduce the existing seating accommodation is not a matter on which the D.M. can legitimately concern himself in deciding the question. Assuming there will be a reduction in taxes payable by the theatre owner under the Karnataka Entertainment Tax Act of 1958 (E.T. Act) that cannot also be a ground for refusing permission for the reduction of seats. A legal avoidance of taxes and not evasion of taxes is always permissible. When there is evasion or attempted evasion of taxes, the same must unnecessarily be dealt under the E.T. Act. But that cannot be a ground to withhold permission if the requirement of Rules are satisfied.

11. Before permitting reduction also the authority should satisfy itself with the requirements of Rule 49 which necessarily means that a proper plan of the proposed seating arrangements should be submitted by the owner, which should then be examined with the requirements of Rule 49 and then a decision taken thereon by the D.M. Along with his application the petitioner does not appear to have produced such a plan at all. Assuming that the petitioner had not produced the same, it would be proper for the D.M. to permit the petitioner to produce such a plan, examine the same then take a decision, preferably consulting the Executive Engineer or such other technical person that is competent to advise him on that aspect.

12. Unfortunately, the D.M. has blindly rejected the application without examining the fact situations and the law. In this view, there is no other alternative for this court except to quash his order and direct the D.M. to re-examine the application made by the petitioner.

13. In the light of my above discussion, I quash the impugned order and direct the D.M. to restore the application made by the petitioner to its original file and dispose of the same in accordance with law and the observations made in this order with all such expedition as is possible in the circumstances of the case and in any event within 60 days from the date of receipt of this order.

14. Writ Petition is disposed of in the above terms. But, in the circumstances of the cases, I direct the parties to bear their own costs.