

(2006) 08 PAT CK 0008
In the Patna High Court
Case No : LPA No. 437 of 2006

The State of Bihar and Others

APPELLANT

Vs

M/s Four Star Picture Palace

RESPONDENT

Date of Decision : 23-08-2006

Acts Referred:

Bihar Cinemas (Regulation) Act, 1954 — Section 4, 6
General Clauses Act, 1897 — Section 21

Citation : (2006) 4 PLJR 60

Hon'ble Judges : J.N. Bhatt, C.J.; Shiva Kirti Singh, J

Bench : Division Bench

Advocate : Nilu Agrawal and Nirmala Kumari, for the Appellant; Madhav Roy, Kanti Roy and Navin Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Dr. J.N. Bhatt, C.J.—There is delay of 258 days in filing this Letters Patent Appeal. After having heard the learned counsel for the parties and considering the grounds stated in the application for condonation of delay and keeping in mind the latest proposition of delay condonation jurisprudence, we are of the opinion that there was sufficient cause for not filing the appeal within the period of limitation. Therefore, the delay in filing the appeal is condoned. I.A. No. 2553 of 2006 is allowed. Rule is made absolute. No costs. We have heard the learned counsel for the parties on the merit of this appeal.

2. This Letters Patent Appeal under Clause 10 of the Letters Patent of the Patna High Court Rules is directed against the order of the learned Single Judge, dated 13.9.2004 passed in CWJC No. 4267 of 2004, whereby the original writ petitioner's challenge is {appellant before us} against the order recorded by the District Magistrate, Purnea, in his capacity as licensing authority under the Bihar Cinemas (Regulation) Act, 1954 (hereinafter referred to as "1954 Act") allowing, partially, the petitioner's request for reduction in number of seats in the Cinema Hall, namely, Four Star Picture Palace, and not allowing reduction in number of

seats to the extent requested by the proprietor-writ petitioner-appellant came to be upheld with a direction to consider the case of the original writ petitioner afresh within one month from the date of the receipt/production of a copy of this order in the light of the decision rendered by a Single Bench of this Court in the case of *M/s Amrapali Cinema Vs. State of Bihar and Others*, .

3. We have been addressed by the learned counsel appearing for the parties. We have also scrutinized, carefully, the factual profile, as well as, examined the text and tenor of the impugned judgment of the learned Single Judge in this appeal, as well as, relevant provisions of law and the case laws.

4. The short question which comes to surface in this Letters Patent Appeal is as to whether the impugned order of the licensing authority whereby the request of the proprietor of the Cinema Hall, for the reduction of the number of seats in the Cinema Hall on account of reasons stated in the application is rightly decided or not? since the reduction is permitted in part and not full, as requested.

5. It is in these context, our attention has been drawn to a decision of the Division Bench of this Court rendered in *Tribhuvan Kumar Saraff Vs. The State of Bihar and Others*, . We have examined the aforesaid case law threadbare and have also considered the text and tenor of law propounded in the case of *M/s Amrapali Cinema (supra)*. It will be relevant to refer to the provisions of Section 4 of the 1954 Act, as well as, Rule 6 of the Bihar Entertainments Tax Rules, 1984 (hereinafter called "1984 Rules") Section 4 of the 1954 Act prescribes statutory provision with regard to the licensing authority. It reads as under:-

4. Licensing authority.--The authority having power to grant licenses under this Act (hereinafter referred to as the licensing authority) shall be the District Magistrate:

Provided that the State Government may, by notification in the Official Gazette, constitute for the whole or any part of the State, such other authority as it may specify in the notification to be the licensing authority for the purposes of this Act.

6. It could very well be visualised from a plain perusal of the aforesaid statutory provision of Section 4 of the 1954 Act that the District Magistrate concerned is the licensing authority having power to grant licenses under the 1954 Act. It is, therefore, natural consequence and corollary that the authorities who have been vested with the power of licensing authority under the Act have to examine and consider the merits of the request or application made by the Cinema Hall owners for reduction or increase of seats, as well as, price of the entertainment tickets etc. Rule 6 of the 1984 Rules are referable to the Amendment of certificate of registration in the eventuality, or in case of the happening of a making of request by a proprietor of any entertainment hall or theatre as the supervising authority for the purposes of consideration of the working of such entertainment process in accordance with the certificate of registration. The provisions of Rule 6 of the 1984 Rule read hereunder:-

6. Amendment of certificate of registration.--(1) If a proprietor of any entertainment sells or otherwise disposes of his business in respect of such entertainment or any part of such business or effects or comes to know of any other change in the ownership, name or style or nature or extent of such business, he, or if he is dead, his legal representative shall, within seven days of such sale, disposal, or change, submit a report to that effect along with the certificate of registration granted under Rule 5, to the authority prescribed in Rule 3, for amendment in the certificate of registration.

(2) A proprietor intending to make any change or modification in the number of seats or in the number of shows or in the rate or admission fee, he shall submit a report to that effect, along with the certificate of registration granted under Rule 5, to the authority prescribed in sub-rule (1), at least fifteen days before the date of such proposed change or modification and until, the said authority approves it and makes necessary amendment in the certificate of registration, such change or modification shall not be effected by the proprietor:

Provided that, if a proprietor contravenes the provisions of this sub-rule, the certificate of registration granted under Rule 5, shall not apply to that extent and in such case, he shall be deemed to have defaulted to that extent in applying for registration certificate under sub-section (2) of Section 6.

(3) On receipt of such information along with certificate of registration and on payment of fees, prescribed by Rule 40, the authority prescribed in sub-rule (1), shall, after making such enquiry, if any as he thinks fit, make necessary amendments in the certificate of registration and such amendment shall operate with effect from the date specified in the certificate of registration."

7. A conjoint reading of the aforesaid two statutory provisions, explicitly, unfolds that modification in a cinema licence with regard to the seating capacity of the hall is one of the major factors on the basis of which the licence is considered and granted. So the amendment of certificate of registration in the licence granted by the competent authority is matter falling within the parameters prescribed in Section 4 of the 1954 Act. Thus, it confers power on the licensing authority to grant the licence for the purpose of running the cinema. Obviously, therefore modification of a licence would be only referable to the power of the concerned authority. It is true that Rule 6 of the 1984 Rules does not, in clear terms, refer to or name the authority for modification of the licence and, therefore, in the light of the celebrated proposition of law as envisaged in the Principles of Statutory Interpretation, one has to look into the provisions of Section 4 of the 1954 Act. Otherwise, also in absence of any other provisions to the contrary, an authority who is empowered to issue licence or grant the certificate of registration would be entitled to vary, rescind, amend, or alter it in terms of the statutory power of issuance of valid licence or registration certificate. This proposition of law would be very much reinforced and strengthened by the provisions of Section 21 of the General Clauses Act, 1897. The provisions of Section 21 of the General Clauses Act are, therefore, also

material and, thus, let the same be quoted with profit as under:-

21. Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws.-- Where, by any Central Act or Regulations a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions if any, to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued.

8. The underlying design and purport, in this regard, has been time and again tested and expounded. The power vested on any authority to issue notifications, orders, rules or bye-laws shall also include the power to add to, and vary, or rescind such notifications, orders, rules or bye-laws. In other words, if any authority has power to do something, he has also the power to undo it in a given situation, in absence of any contrary provision. Unfortunately, in the present case, the licensing authority has not given clear reasons as to why request in its entirety made by the proprietor of the Cinema Hall was not accepted and why it was acceded only partially. No provision has been shown which would indicate, even remotely, that such an exercise is supportable by any statutory or rule provision.

9. We find, therefore, that the impugned order of the licensing authority in accepting, partially, the request for reduction of seats and rejecting the remaining part of the request made by the proprietor of the Four Star Cinema Hall is not found to be in consonance with law on the judicial scrutiny. It is in these context, direction of the learned Single Judge for reconsideration cannot be said to be in any way perverse, unjust, unreasonable requiring our interference in exercise of our extraordinary power under clause 10 of the Letters Patent of the Patna High Court. However, while concluding this judgment, we would like to observe that the reconsideration of the application or request of the original writ petitioner owner of the Cinema Hall for reduction of the seats etc. and resultant change in the licence will be examined in the light of the decision of this Court rendered in *M/s Amrapali Cinema (supra)*, but, we are of the opinion that attention of the learned Single Judge ought to have been drawn to the Division Bench decision in the case of *Tribhuwan Kumar Saraff vs. The State of Bihar & Ors. (supra)*.

10. Therefore, it is further observed that the reconsideration of the application of the proprietor of the Cinema Hall, original writ petitioner, will be made by the licensing authority in accordance with law, as well as, in the light of the principles of law evolved aforesaid by this judgment. This appeal shall, accordingly, stand dismissed but without costs.