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**(1984) 08 BOM CK 0017**

**In the Bombay High Court**

**Case No :** O.S. Appeal No. 113 of 1974 in Miscellaneous Petition No. 6 of 1979

The State of Maharashtra

APPELLANT

Vs

Indian Film Combines Private Ltd.

RESPONDENT

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**Date of Decision :** 23-08-1984

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (1984) 86 BOMLR 447

**Hon'ble Judges :** Lentin, J;Kania, J

**Bench :** Division Bench

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## Judgement

Lentin, J.—In 1977 at considerable expense, the respondents built a cinema theatre at Bandra. Not the conventional type where you walk in, stand at the counter, buy your ticket, walk into the auditorium, and later walk out. In the respondents' theatre you drive into a vast open land, park your car facing a giant screen, have a sound contraption attached in your car, pay so much for the car and so much for each occupant, and at the end of the show drive out. It is called a drive-in theatre. One would think watching a film from the cramped confines of a motor-car would be a trying experience. Apparently not. We are reliably assured across the Bar that it understandably meets with the enthusiastic approval of the younger generation.

2. On December 29, 1977, at considerable expense the State's only drive-in theatre was inaugurated with some fanfare by the Chief Minister. Regular shows commenced the next day. Like all other theatres in Bombay, the respondents' licence contained the usual restriction against screening after 1.00 a.m. Two shows were held daily by the respondents. The winter timings (October/March) were 6.30 p.m. to 9.15 p.m. and 9.30 p.m. till 12.30 p.m. to 1.00 a.m. depending on the length of the film. The summer timings (April/September) were 7.00 p.m. till 9.45 p.m. and 10.00 p.m. till 1.00 a.m.

3. By a notification dated December 30, 1978 embracing "any drive-in cinema", the respondents' 1.00 a.m. time limit was, despite their objection, restricted to

10.00 p.m. except by prior permission of Government. With such restriction the respondents' annual licence was renewed. The authorities did not heed the respondents' requests for restoration of the original 1.00 a.m. limit.

4. The respondents thereupon filed a writ petition for striking down that notification. They succeeded before the learned single Judge. He held (a) the impugned action restricting the time limit till 10.00 p.m. was so extravagant as to be unreasonable; (b) there was no overwhelming public interest to justify the same; and (c) the doctrine of promissory estoppel came into operation. Hence the present appeal.

5. [After dealing with minor propositions. His Lordship proceeded]

6. And now to the essential controversy: Was it in public interest to further restrict the original 1.00 a.m. restriction? If so, was the 10.00 p.m. restriction a reasonable one imposed bona fide in larger public interest?

7. [After answering the first question in the affirmative and the second question in the negative, His Lordship proceeded]

8. But then does the striking down of the 10.00 p.m. restriction mean that the original 1.00 a.m. restriction is automatically revived? Yes, says Mr. Chinai. And Mr. Chogule takes up the refrain. Mr. Chinai in the hope that the 1.00 a.m. limit can thus be indirectly restored and to which end he has been vociferously advocating, and Mr. Chogule in the fear that it will be.

9. Both are mistaken, with respect of course. To resuscitate the 1.00 a.m. time limit, which we hold merited reduction in general public interest, is exactly what the respondents in effect want in the guise of seeking to set aside the 10.00 p.m. restriction on the ground that it is unreasonable, which indeed it is. But then to accede to learned Counsel would result in this: In one breath we say that the 1.00 a.m. time limit was correctly reduced in public interest and in the next breath by striking down the 10.00 p.m. restriction, we would be restoring the 1.00 a.m. time limit which we hold is not in public interest. An anomalous situation would thus arise. And would foster the myth that the law is an ass. Mercifully it is not.

10. Faced with such a situation, the Court in exercise of writ jurisdiction under Article 226 is not entirely helpless as Mr. Chinai and Mr. Chogule make it out to be. In issuing directions, orders and writs under Article 226, the Court can travel beyond the contents of the writs which are normally issued as writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari, P.J. Irani Vs. The State of Madras, ; Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another, The Court can give any direction requiring affirmative action or positive activity where, under the corresponding "prerogative writ", the Court could only set aside the order complained of. State of Kerala Vs. Kumari T.P. Roshana and Another, The Court can also mould the relief to meet the peculiar and complicated requirements of the case Dwarka v. I.T.O., (supra), naturally

without contravening any provision of the Constitution or the law declared by the Supreme Court. *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, Any technical construction of this power would defeat the purpose of Article 226 itself [ *Dwarka v. I.T.O. (supra)*]. The Court has the discretion to frame a proper order which would "suit the exigencies of the case" before it. *Kavalappara Kottarathil Kochunni Moopil Nayar Vs. The State of Madras and Others*,

11. In *A.L. Kalra Vs. Project and Equipment Corporation of India Ltd.*, , even after setting aside an order of removal, the Supreme Court fixed the back-wages at 50%. In *Bhagat Ram Vs. State of Himachal Pradesh and Others*, , even after setting aside the order of removal, the Supreme Court directed the withdrawal of 2 increments of the employee with future effect and payment of 50% of the arrears of salary from the date of termination till reinstatement. In *D.S. Nakara and Others Vs. Union of India (UOI)*, , the Supreme Court not only struck down some parts of the Rule but declared that all pensioners governed by the 1972 Rules and Army Pension Regulations shall be entitled to pension as computed under the liberalised pension scheme from the specified date, irrespective of the date of retirement and observed that arrears prior to the specified date as per fresh computation shall not be admissible. In *Randhir Singh Vs. Union of India (UOI) and Others*, , while allowing the petition of a driver-constable in the Delhi Police Force under Delhi Administration on the plea of "equal pay for equal work", the Supreme Court directed the respondent to fix the petitioner's scale of pay at least on par with that of drivers of the Railway Protection Force with effect from January 1, 1973 being the date from which the Pay Commission's recommendation was given effect to.

12. The latest in the long line of decisions of the Supreme Court on this aspect is *Dr. Pradeep Jain v. Union of India* " decided but a few few weeks ago. The question that arose was whether admissions to a medical college in a State could be confined to those residing within the State for a specified number of years or whether reservation could be made for them so as to give them precedence over those who did not possess the residential qualification within the State irrespective of merit. After taking all the facts and circumstances into consideration, including the suggestion of the Medical Education Review Committee that the outer limit should not exceed 75%, the Supreme Court concluded that it was fair and just to fix the outer line at 70% of the total number of open seats after taking into account other kinds of reservations validly made. This outer limit of 70% so fixed was made binding by the Supreme Court on the Union, the State Governments and Administrations of Union Territories.

13. These decisions of the Supreme Court must lay at rest the submission of learned Counsel advanced before us to the contrary. The reliance placed by Mr. Chinai on *The State of Gujarat and Another Vs. Shri Ambica Mills Ltd., Ahmedabad and Another*, , can avail the respondents nothing. In that case the question arose whether a particular legislation should be extended to those not

previously covered. The Supreme Court was invited to answer whether the inclusion of tramway and motor omnibus service in the definition of "establishment" made the classification unreasonable having regard to the purpose of the legislation. Observing that the Court must weigh the general interest in retaining the statute against the Court's reluctance to extend legislation to those not previously covered, the Supreme Court answered in the negative the question it was invited to do. That decision has no application to the facts of the matter before us or any bearing on any of the submissions made by Mr. Chinai on behalf of the respondents.

14. In the light of the above authorities, it is within our power in exercise of jurisdiction under Article 226, to take all the facts and circumstances into account and to mould the relief by fixing a time limit which is reasonable, taking care to balance public interest and well-being on the one hand and the respondents' right to carry on their business on the other. Mr. Chinai cannot be heard to say that if we fix the time limit, the respondents will be deprived of a hearing before the authorities. Mr. Chinai however maintained a discreet silence as to what the respondents could possibly tell the authorities what Mr. Chinai has not already told us and what the respondents have not already told the authorities when asked to show cause why the time limit should not be reduced to 10.00 p.m. What is more, we do not propose to reduce the 10.00 p.m. limit but to increase it - though not till 1.00 a.m. as the respondents would have us do.

15. We are of the view that a balanced time limit would be 11.30 p.m. during winter and 12.00 mid-night during summer. This would essentially meet the requirement of the residents themselves and the respondents will be able to run two shows throughout the year, which is the actual purpose of their exertion. Perhaps during summer, the programme may have to be of a slightly shorter duration. But then, if the respondents insist on having 2 shows during summer, that cannot be helped. Private weal cannot prevail over public woe.

16. The order of the learned single Judge striking down the impugned notification dated December 30, 1978 is upheld but with the rider that the appellants shall forthwith modify the respondents' licence specifying the restriction as 11.30 p.m. during winter (1st October/31st March) and as at 12.00 mid-night during summer (1st April/30th September). The authorities are directed to strictly enforce the silence zone in the area, not only in respect of horn blowing but also to prevent the noise, if any, from the sound track being a source of nuisance and annoyance to the residents, and for the latter purpose, promptly to take such steps against the respondents as may be open for the authorities in law to do. Rule is made absolute accordingly. There will be no order as to costs throughout.

17. [The rest of the judgment is not material to this report].