(2010) 08 MAD CK 0337

In the Madras High Court

Case No : Writ Appeal No''s. 47 to 56 and 824 to 827 of 2002 and W.A.M.P. No''s. 95 to 99, 105 to 109 and 1640 to 1643 of 2002

The State of Tamil Nadu APPELLANT

Vs

Bhurah Sheriff RESPONDENT

Date of Decision : 17-08-2010

Acts Referred:

Tamil Nadu Cinemas (Regulation) Act, 1955 — Section 10, 10(1), 10(2)
Tamil Nadu Cinemas (Regulation) Rules, 1955 — Rule 53(1), 91B

Citation : (2010) 5 CTC 538 : (2010) 5 LW 356

Hon'ble Judges : R. Banumathi, J;G.M. Akbar Ali, J

Bench : Division Bench

Advocate : M. Dhandapani, Spl. Government Pleader W, for the Appellant; A.V. Radhakrishnan in W.A. Nos. 47 to 56 of 2002, for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, J.—These Writ Appeals arise out of the Common Order in W.P. No. 10048/1999 etc., Batch, whereby the learned single Judge struck down the provision viz., Rule 91B of Tamil Nadu Cinemas (Regulation) Rules, 1955 introduced through G.O.Ms. No. 678, Home (Cinemas-II) Department dated 18.05.1999.

2. Brief facts are that Writ Petitioners have obtained contracts from the respective Cinema theatres to establish canteens as well as maintaining the parking lots in cinema theatres. For getting the said contract, they have paid lumpsum amount to the licensee of the theatre and they have been also paying the specified amount on monthly basis for running the canteens and maintaining the parking lots. Apart from paying the licence fee for the theatre, the Writ Petitioners are required to spend huge amount to engage men for the purpose of maintaining the parking area. According to the Writ Petitioners, they are collecting the fee from the vehicles which are parked in the theatre for the services rendered by them and also they are taking care of the said vehicles and

seeing that the vehicles are taken out of the theatre after the show is over by the respective owners. Writ Petitioners are collecting the fee from the owners of the vehicles as per the fees collected by the Corporations and Municipalities from the vehicles which are parked on the road in the specified areas. Writ Petitioners are collecting the parking fee of Rs. 5/- from cars, Rs. 3/- from motorcycle and Rs. 2/- from cycle for each show.

3. Case of Writ Petitioners is that the Government have issued G.O.Ms. No. 678 Hone (Cinemas-II) dated 18.5.1999 amending the Cinema Regulation Rules by introducing Rule 91B as per which the licensee of a cinema theatre is authorised to collect fees for parking vehicles in the cinema theatre situate in the Corporation and Grade-I Municipalities at the rate of Rs. 3/- from Cars, Rs. 2/- from two wheelers and Rs. 1/- from cycles. In the case of theatres situate in other than the Grade-I Municipalities, the fees to be collected is Rs. 2.50 from cars, Rs. 2/- from two wheelers and Rs. 1/- from cycle and in the case of Panchayat Rs. 2/- from cars, Rs. 1/- from two wheelers and 0.50 paise from cycle. Contending that the impugned amendment restricts the fees to be collected in the manner stipulated has the effect of seriously affecting the business of the theatres, the Tamil Nadu Film Exhibitors Association and the Contractors have filed the Writ Petitions challenging the said Rule.

4. Resisting the Writ Petitions, Government have filed counter contending that Rules have been framed in exercise of the powers conferred u/s 10(l) of the Tamil Nadu Cinemas (Regulation) Act. Case of Respondents is that only after collecting particulars from various Collectors of the Districts regarding the rates of parking vehicles - Cars, Motorcycles, Cycles and the proposed rates in Corporations, Municipalities, Town Panchayats and Villages and after examination of the recommendations and the report of the Joint Commissioner (Cinema) Land Administration, Chennai, Government have issued the notification regulating the parking fees and the fixation has been done by inserting Section 91B in G.O.Ms. No. 678, Home (Cinemas-II), Department dated 18.05.1999.

5. Upon consideration of the contentions, the learned single Judge held that though the Government is having power to regulate the collection of the fees for parking the vehicles in the premises of cinema theatres, Rule 91B in so far as it fixes the fixed rates in general to be collected as fees for parking the vehicles in the place provided in the respective cinema theatres cannot be sustained since the said rates are not fixed taking into consideration of the various aspects regarding the expenses incurred for providing the amenities by the licensees, the learned single Judge struck down the Rule 91B and allowed the Writ Petitions. For striking down Rule 91B, the learned single Judge referred to Royal Arts, Coimbatore Vs. State of Madras and Another, Aggrieved by the order of learned single Judge, Government have preferred these Appeals.

6. Drawing our attention to Rule 53(1) of Tamil Nadu Cinemas (Regulation) Rules, the learned Special Government Pleader Mr. Dhanapani submitted that for obtaining C-form licence, making available the parking space is mandatory and

as per Section 10(1) of T.N. Cinemas (Regulation) Act, it is well within the legislative competence of the Government to regulate the collection of parking fee. It was further submitted that as per condition No. 16 in C-form licence, the licensee shall provide a suitable cycle stand for the cycles and only after obtaining complaints from the general public that the licensees of the theatres are collecting exorbitant fee for parking the vehicles indiscriminately and therefore Government passed G.O.Ms. No. 678 dated 18.5.1999 fixing the parking fee and the same was passed in public interest to regulate the collection parking fees and the amendment - Rule 91B is well in accordance with Section 10(1) of the Act and while so the learned single Judge was not right in striking down Rule 91B. It was further argued that while striking down Rule 91B, the learned single Judge had not kept in view the indiscriminate and arbitrary collection of parking fee by the licensees.

7. We have heard Mr. A.V. Radhakrishnan, learned Counsel appearing for Respondents/Writ Petitioners. Learned Counsel for Respondents submitted that while fixing the parking fees, Government should take into account the amenities provided in the respective theatres and Rule 91B amended in G.O.Ms. No. 678 dated 18.5.1999 has fixed the rates in which without taking into account the nature of amenities and facilities provided by each theatre and also the expenses incurred by them to provide the same and therefore the learned single Judge has rightly struck down Rule 91B.

8. Section 10 of the Act empowers the Government to make Rules. Section 10(2)(a) provides for terms, conditions and restrictions, subject to which licence may be granted under T.N. Cinemas Regulation Act and the fees to be paid in respect of such licence. Section 10(2)(l) is the enabling provision for the Government to frame Rules as to the fee to be collected by the licensees for parking vehicles in the premises of cinema theatre. By virtue of the power conferred u/s 10, the Government framed T.N. Cinemas (Regulation) Rules. Part IV of the said Rules provides for Building and infrastructure to be provided. As per Rule 53(1), the licensee of the theater has to provide atleast three of its sides with an open space of not less than 6.10 metres in width or of such greater width as may be provided by the licensing authority for parking the vehicles. Rule 53(1) reads as under:

The building shall be provided on at least three of its sides with an open space of not less than 6.10 metres in width or of such greater width as may be required by the licensing authority for parking the number of cars which would be normally attracted, and for the purpose of the free movement of persons and for facilitating rescue operations in times of emergency;

Provided that in the case of a building where the licensee has provided adequate parking space for cars either in the basement or ground floor over which the auditorium is located, or in the vicinity of the building, acceptable to the licensing authority, there shall be an open space of not less than 3.05 metres on all sides of the building except on the rear side, for the free movement of persons and to facilitate rescue operations in times of emergency.

Provided further that in the case of a building with shopping complex the licensing authority shall consider the requirement of open space, in consultation with the authorities of the planning department, police Department, Fire services Department and the Public Works Department, keeping in view the number of persons expected to visit the shopping complex as well as the cinema theatre and other aspects concerning free movement of persons and vehicles and the space required to facilitate rescue operation in times of emergency

9. As per Rule 102.B, the licensee shall provide a suitable cycle stand with non-flammable roofing and make arrangements for the safety of the cycles. Likewise, as per condition No. 16 in C-form licence, the licensee shall provide a suitable cycle stand stand for the cycles that may reasonably be expected to be brought and arrange for taking care of them. Further, licensee shall also make arrangements to look after the cars, motor cycles, etc., which are parked within the licensed premises .Only after satisfying the amenities, the licensing authority shall issue C-form licence for the cinema theatre.

10. As pointed out earlier, Section 10(2)(l) is the enabling provision to frame rules in respect of the fees to be collected by the licensees for parking the vehicles in the premises of cinema theatre. Exercising power u/s 10 of the Act, the Tamil Nadu Government fixed the fee for parking vehicles in the premises of cinema theaters .The amended Rule 91B reads as under:

91B The licensee of a cinema theatre may collect a fee for parking vehicles in the premises of the cinema theatre specified in the Table below:

TABLE --- Area Fee to be collected --- (1) (2) Car Three Two Wheeler Cycles Wheeler (Motor) Vehicles (Motor) --- (a) (b) (c) --- Rs. P Rs.P Rs.P --- 1. Corporation/ District Head Quarters Grade I Municipalities 3.00 2.00 1.00 --- 2. Municipalities other than Grade I Municipalities 2.50 2.00 1.00 --- 3. Town Panchayats/ Village Panchayats 2.00 1.00 0.50 ---

11. Before the learned single Judge, the Writ Petitioners challenged the vires of Section 10(2)(l) conferring power to the Government to fix the parking fee. The learned single Judge upheld Section 10(2)(l). However, the learned single Judge observed that Rule 91B was amended fixing the rates for parking the vehicles and the said rates were fixed without taking into consideration various aspects regarding the amenities and facilities provided by the theatre owners and also the expenses incurred by them to provide the same. The learned single Judge

also observed that the "levy of fee must be by and large quid pro quo for the services rendered and even though the Government have power to regulate such a levy, the fee should have correlation with the actual expenses incurred for providing amenities. Upholding the Rule making power of the Government and striking down Rule 91B the learned single Judge held as under:

21. In view of the above discussion, I hold that though the Government is having power to regulate the collection of the fees for parking the vehicles in the premises of cinema theatres, Rule 91B of the Rules in so far as it fixes the fixed rates in general, to be collected as fees for parking the vehicles in the place provided in the respective cinema theatres, cannot be sustained, as the said rates are not fixed taking into consideration of the various aspects regarding the expenses incurred for providing the amenities by the licensees, and so the said Rule to that extent is struck down. It is for the respondents to fix the same taking into consideration of the above said observations....

12. The learned single Judge felt that the above rates were fixed not taking into consideration the various aspects regarding the expenses for providing the amenities. In our considered view, when the learned single Judge felt that the fee was fixed without taking into consideration the actual expenses incurred for providing amenities and other expenses and even while directing the Government to re-fix the appropriate rates, learned single Judge was not right in striking down Rule 91B and allowing the Writ Petitions.

13. Considering the validity of a subordinate legislation, the Court will have to consider the nature, object and scheme of the enabling Act and also the area over which power has been delegated under the Act and decide whether the subordinate legislation conforms to the parent statute and whether there is lack of legislative competence to make the subordinate legislation or violation of fundamental rights or repugnant to the laws of the land. The burden of proof lies upon him, who attacks a subordinate legislation to show that it is invalid or there is manifest arbitrariness/unreasonableness. It is pertinent to note that the writ petitioners have not come out with definite averments that in maintaining the parking of vehicles in the premises of cinema what are the amenities and facilities provided by them and the nature and extent of expenses incurred by them. In the absence of any such averments and materials before the learned single Judge, in our considered view, learned single Judge ought not to have struck down Rule 91B.

14. Insofar as striking down Rule 91B, the order of learned single judge is set aside and these Writ Appeals are allowed. However, at this distant point of time, the Government cannot insist upon the same rates which have now become obsolete. The Government shall re-fix the parking fee after hearing the objections of the theatre owners and also the licensing authorities/District Collectors and re-fix the parking fee in accordance with law. No Costs, consequently ,connected miscellaneous petitions are closed.

