

(1981) 01 P&H CK 0002

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ No. 6300 of 1976

Deepak Theatre, Dhuri

APPELLANT

Vs

The State of Punjab and Another

RESPONDENT

Date of Decision: Jan. 1, 1981

Acts Referred:

- Punjab Cinemas (Regulation) Act, 1952 - Section 5
- Punjab Cinemas (Regulation) Rules, 1952 - Rule 4

Citation: AIR 1981 P&H 92

Hon'ble Judges: Rajendra Nath Mital, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

1. This judgment will dispose of Civil Writ petitions Nos. 1750 to 1955 and 1958 of 1971 and 6300 to 6306 of 1976 which involve the same question of law. The facts in the judgment are being given from C.W. P. No. 6300 of 1976.

2. The petitioners is running a Cinema at Dhuri. It has been granted a licence by the District Magistrate, Sangrur, respondent No, 2 u/s 5 of the Punjab Cinemas (Regulation) Act, 1952(hereinafter referred to as the Act). It is alleged that it made three classes and fixed rates for each class. Respondent No. 2 vide order dated Feb 26, 1971 passed an order fixing the rates of the classes, which were lower than those prescribed by the petitioner and directing it further to create one more class, the entrance fee of which be fixed at 0. 80 paise. That order was challenged by the petitioner in Civil Writ Petition No 1752 of 1971. There after respondent No. 2 again made new classes by abolishing earlier ones and fixed different admission rates vide order dated Aug. 26, 1976. It may be mentioned that even these rates were less than those fixed by the petitioner. The petitioner challenged the aforesaid order in C. W. P Nos. 6300 of 1976. The writ petition has been contested by the respondents.

3. The only question that arises for determination is as to whether condition 4 of the licence authorizing the licensing Authority to make classes in the Cinema Halls and fix their rates is valid. In order to determine the question it will be relevant to refer to the scheme and some of the section of the Act. The preamble of the Act is in these words:--

"The Act to make provision for regulating exhibitions by means of cinema to graph in the Punjab."

4. Section 3 provides that no person shall give an exhibition, by means of a cinematograph, elsewhere than place licensed under the Act or otherwise than in compliance with any condition and restriction imposed by such license. Section 4 prescribes the Licensing Authority.

5. Section 5 deals with restrictions on powers of the Licensing Authority. The section reads as follows:--

"(1) The licensing authority shall not grant a licence under this Act unless it is satisfied that:--

(a) the rules made under this Act have been complied with, and

(b) adequate precaution have been taken in the place, in respect of which the licence is to be given to provide for the safety of the persons attending exhibitions therein.

(2) Subject to the foregoing provision of this section and to the control of the Government, the licensing authority may grant license under this Act to such persons as it thinks, fit, on such terms and condition as it may determine.

(3) xx xx xx

(4) The Government may, from time to time issue directions to licensees generally or to any licensee in particular for the purpose of regulating the exhibition of any film or class of films, so that scientific films, films intended for educational purposes, films dealing with news and current events, documentary films indigenous films secure an adequate opportunity of being exhibited, and where any such direction have been issued, any those direction shall be deemed to be additional condition subject to which the licence has been granted."

6. Section 6 empowers the Government and the District Magistrate to suspend the exhibition of a film if/ he is of opinion that the film is likely to cause a breach of peace. Section 8 authorises the State Government and the registering authority to suspend, cancel or revoke the licenses of licensees. S. 9 gives the Government power to make Rules. The relevant part reads as follows:--

"The Government may, by notification in the official Gazette, make rules--

(a) prescribing the terms, condition and restriction, if any, subject to which licences may be granted under this Act;

(aa) to (c)

7. From a reading of the above sections, there appear to be three object of the Act--Firstly, to safeguard the public health and safety, secondly, to safeguard against undesirable, obscene or provocative films being shown to the public and thirdly to regulate exhibition of films, direct exhibition of documentary films and the films meant for educational purposes etc. (see [Govind Ram Sharma Vs. State of Uttar Pradesh and Another,](#)). There is no section in the Act authorizing the Licensing Authority to prescribe classes in the Cinema Halls or to fix rates of the classes.

8. It is well settled that the Rule making Authority has got powers to frame Rules which fall within the four corners of the Act, Generally, the purpose of the Rules is to provide for procedural matters or matters which are subsidiary to the provision of the act. The rule making outside the provision of the Act. No doubt it is provided in Clause (a) of sub-section (1) of S. 9 that the government can prescribed terms and conditions subject to which a licence may be granted but the clause has to be read subject to other section of the Act. It cannot be said that by virtue of the clause unlimited powers have been given to the Rule making Authority to frame any Rule.

9. Rule 4 of the Punjab Cinemas (Regulation) Rules, 1952 on which reliance has been placed by the respondent is as follows:--

"Licenses, whether for a period of three years or temporary, shall be in form A annexed to these rules and shall be subject to the conditions and restriction set fourth therein and to the provision of these rules."

It is prescribed in the Rule that the license shall be in form "A" annexed to the Rules. It is further said that these shall be subject to the condition and restriction mentioned therein Condition 4 is the relevant condition and is reproduced hereunder:--

"xx xx xx

The licensee shall observe the classification of seats and the price thereof for different parts of the licensed building /place, approved by the licensing authority as indicated below and shall not amend or alter the same in any way without the prior approval of the licensing authority.

Class of accommodation may be admitted into class admission

*Number of persons which Rate of

*The Licensing Authority will here enter the number of persons who may be admitted into the several parts of the auditorium having special regard to the provision of R. 24."

10. The learned counsel for the respondents has placed reliance on the said condition. He submits that the Government can make classification of the seats in a

Cinema Hall and fix rates therefor. On the other hand, the counsel for the petitioner has argued that such a condition could not be prescribed by the Government under S. 9 Even if the Condition is considered to be a part of the Rules, in my view, it is beyond the competence of the Government to set fourth such a condition under the Act. I have already observed that no section had been brought to my notice under which the Government could lay down such a condition. It has also no nexus with the objects of the Act. Thus the condition is invalid. In the aforesaid view I get some force from the observation in [Royal Arts, Coimbatore Vs. State of Madras and Another,](#). In the case, the petitioner was a licensee to the case the petitioner was a licensee to run Cinema Theatre in Coimbatore. There he had put a cycle stand which was given on lease. The lessee used to charge 10 Paise per cycle for parking in the cycle stand. The state Government amended a Rule framed under the Madras Cinema (Regulation) Act, and made a provision that the licensee would provide a suitable cycle stand for all cycles that might reasonable be expected and appoint a care -taker to look after the cycle. He might collect a fee not exceeding 5 paise for each cycle kept in the cycle stand. The licensee challenged the aforesaid order contending that it was outside the jurisdiction of the authorities to prescribe the charges for using the cycle stand. The learned Judge held that the Rule was beyond the jurisdiction of the Rule making Authority. As condition No. 4 is ultra vires the Act, therefore the orders of respondent No. 2 are illegal and liable to be quashed.

11. A contention has also been raised by Mr. Ashok Bhan that condition 4 is hit by Art. 19(1)(g). it is not necessary to go into this matter, as I have already held that the condition is ultra vires the act.

12. For the aforesaid reasons, I accept the writ petitions and quash the impugned orders passed by respondent No. 2 No order as to costs.

13. Petition allowed.