

M/S.Surendra Associates, vs The Entertainment Tax Officer, on 14 February, 2023

Bench: T.Vinod Kumar, P.Sree Sudha

HONOURABLE SRI JUSTICE RAJA ELANGO

W.P.Nos.18779, 19046, 19084, 24651, 24739 OF 2014, 26695, 26718, 27111 OF 2013, 37249, 37309, 27394, 27426, 27690, 27700, 28089, 28096, 28684, 28906, 29172, 34652, 11248, 35097, 38332, 38829, 41009 OF 2014, 200, 441, 445, 1072, 1893, 7167, 7214, 7771, 7772, 7864, 7951, 8160, 8213, 8341, 8344, 8363, 8408, 8434, 8450, 8454, 8479, 8491, 8551, 8569, 8594, 8699, 8776, 9269, 9304, 9309, 9350, 9605, 9628, 9759, 10769, 11628, 11646, 11651, 11826, 13538, 13547 OF 2015, 22795 OF 2014, 13621, 15577, 17845, 1043, 15585, 18090, 19148, 19612, 19691, 20534, 20564, 20596, 20597, 20958, 20990, 22185, 22615, 22823, 23140, 23267, 23571, 23709, 23755, 24065, 24080, 24087, 24279, 24290, 24300, 24531, 24532, 24643, 24828, 25161, 25166, 25881, 26118, 27224, 27990, 28652, 33376, 33462, 34218, 34969, 34982, 34985, 34995, 35241, 36782, 39117, 40125, 40476, 40642, 41058, 42236 OF 2015, 1311, 2169, 2185, 3945, 6588, 7033, 8411, 8419, 8454, 8460, 8517, 8782, 8794, 9536, 9653, 10411, 10414, 10675, 11064, 11324, 11330, 11596, 11599, 12367, 12400, 13142, 16308, 16503, 16504, 17212, 20407, 22020, 22425, 23986, 25294, 26023, 26864, 26993, 27015, 27029, 28552, 29224, 29253, 29259, 35949, 35956, 36027, 36056 and 36260 OF 2016

COMMON ORDER:

1. Since the issue involved in all the writ petitions is one and the same, all the writ petitions are heard together and being disposed of by this common order.
2. The case of the petitioners is as follows:

On the earlier occasion, a batch of writ petitions was filed by the owners of various theatres questioning the validity of the orders passed by the Government in G.O.Ms.No.181, dated 11.7.2011. This Court had struck down the said G.O. and directed the Government to constitute a fresh committee with the Chief Secretary as Chairperson and with some other members for the purpose of suggesting the factors to be considered while fixing or increasing the rates of tickets in various classes of Cinema Theatres. In pursuance of the said directions, the Government of Andhra Pradesh RE,J WP NOS.19046 OF 2014 & BATCH appointed a High Power Committee with seven members consisting of (1) Chief Secretary to Government; (2) Principal Secretary to Government (Revenue-CT); (3) Principal Secretary to Government (MA-UD), (4) Principal Secretary to Government (Finance); (5) Commissioner & Ex- Official Secretary (I & PR) ; (6) Principal Secretary to Government (IT) and (7) Special Chief Secretary to Government (Home) (Passports, Fire and Cinematography). After recommendations of the Committee, the Government issued the impugned G.O. It is the case of the petitioners that the committee suggested the rates of highest ticket price at Rs.75/- in Municipal

Corporation and the rates for the lowest class at Rs.20/-. Insofar as the Municipalities are concerned, the same rates were suggested. The grievance of the petitioners is that the 1st respondent deviated from the recommendations and notified that the earlier ticket price of Rs.10/- for the lowest class has to be continued. Prior to issuance of the G.O. impugned the price of ticket for lowest class was Rs.10/- (for air-conditioned) theatres and Rs.6/- for (non-air conditioned) theatres. The 1st respondent increased the minimum ticket prices for non-air conditioned theatres from Rs.6/- to Rs.10/-. It leads to very unfair situation where the air conditioned cinema theatres are permitted to collect only Rs.10/- to the lowest class, and where non-air conditioned cinema theatres are being encouraged to collect Rs.10/-

for the lowest class. The authority exercised by the 1st respondent while notifying the minimum ticket prices to air-conditioned theatres and while fixing the minimum percentage of seats thereof is contrary to the authority available to him under the provisions of A.P. Cinemas (Regulation) Act, 1955 and A.P. Cinemas (Regulation) Rules, 1971. Hence, the petitioners filed the above writ petitions.

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3. The averments made in the counter filed by the 1st respondent- Deputy Secretary to Government, Home Department, A.P., read as follows:

As per the recommendations of the committee, the 1st respondent- Government of Andhra Pradesh issued G.O.Ms.No.100, Home (General.A) Department, dated 26.4.2013 revising the rates of tickets for the highest and lowest classes and also fixing the percentage of the number of seats in lowest category. The Government fixed the rates of tickets for the lowest class as Rs.10/- so as to benefit the poor and middle class cine-goers. The recommendations of the said committee are advisory only but not absolute. The 1st respondent after considering the larger interest of the society has fixed rates to the lowest class. The Government also classified areas (cities, towns etc.,) into five grades for the purpose of fixing the rates of tickets of the cinema theatres in different classes. The Government after careful examination of the recommendations of the High Powered Committee enhanced ceiling on rates of tickets in the highest and the lowest classes of cinema theatres. The managements of the theatres are empowered to fix the ceiling on rates of admission for intermediary classes such as 2nd and 3rd classes between the highest and the lowest depending on the number of classes and the management has to provide, with justifiable reasons with reference to spacing, quality of seats etc. The Government issued the G.O impugned with reasonable classification. There are no grounds to interfere with the G.O. impugned.

4. Heard both sides and perused the material available on record.

5. The impugned G.O. reads as follows:

The matter regarding revision of rates of admission to the cinema theatres in Andhra Pradesh was under consideration of the RE,J WP NOS.19046 OF 2014 & BATCH Government. Meanwhile, the Hon'ble High Court of A.P. in its common order in W.P. No. 20656,20658 and 20661 of 2011 and 3785 of 2012 dated:25.09.2012, quashed G.O.Ms.No.181, Home (Genl.A) Dept., dated:11.07.2011 with certain directions to Government to constitute a Committee to suggest factors to be considered while fixing rates of admission into various classes of the cinema theatres, classification of theatres and fixation of rates of admission into different classes in such theatres, based on which Government was directed to issue necessary orders within a specific time- frame.

2. Government have accordingly constituted a Committee vide rd reference 3 cited. The Committee subsequently submitted its recommendations, based on which, and after carefully examining the matter, Government issue the following orders:

I. Government hereby classify areas (cities, towns, etc.) into the following five grades for purposes of fixing the rates of admission into the various classes of the cinema theatres:-

(1)Grade I-Greater Hyderabad Municipal Corporation (2)Grade II - All Municipal Corporations (3) Grade III - Selection Grade Municipalities, Special Grade Municipalities and First Grade Municipalities (4) Grade IV - Second Grade Municipalities and Third Grade Municipalities (5) Grade V - Nagarpanchayats and Gram Panchayats II. (a) Based on the above stated classification of grades (1), (2), (3), (4) and (5) of I above and based on the facilities being provided in cinema theatres indicated in Annexure-I, the Government hereby enhance ceiling on rates of admission into highest and lowest classes of cinema theatres as given in Annexure-II. The seats in the lowest class shall not be less than 20% of the total seats.

(b) The enhanced rates shall come into immediate effect. The old theatres constructed prior to 2005 shall within three months put in place the additional facilities under category II of Annexure-I except at Sl. No.2 and 3, in order to charge the enhanced rates thereafter. Similarly, within three months of issue of revised fire safety measures (as per the Govt. orders to be issued shortly), revised fire safety measures shall be put in place, failing which the theatres concerned shall charge only pre-revised rates. The licensing authorities shall monitor and ensure the same accordingly.

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(c) The managements of the theatres are hereby empowered to fix the ceiling on rates of admission for intermediary classes, such as nd rd 2 or 3 class, between highest and lowest, depending on the number of classes the management wish to provide, with justifiable reasons with reference to spacing, quality of seats, etc. The managements shall indicate the same in their applications under

rule 11A and 12A and the licensing authority shall after due consideration issue appropriate orders in Form-B license.

(d) Government hereby permit the theatres / multiplexes flexibility to lower the rates of admission to be less than the rate fixed for the highest class and lowest class as fixed by Government and as approved by the licensing authority for intermediary classes and to also increase the rates upto the maximum now allowed. However, the provision of flexibility in reducing the rates and increasing upto maximum rate allowed is hereby extended to Municipalities Grades I to III, Nagar Panchayats and Gram Panchayats, subject to the condition that such decrease in rates of admission shall not have the effect of reduction of entertainment tax payable on the basis of gross collection capacity, until further orders. In respect of Municipal Corporations, Selection Grade and Special Grade Municipalities, the flexibility in reduction of rates or enhancing upto maximum rates allowed can be for any number of days. However, the theatres wishing to lower the rates or increase upto maximum rates allowed in all grades of areas shall also give prior intimation under proper acknowledgment to the licensing authorities and the local police concerned at least two (2) days before the revised rates are to be adopted by them. In addition, only those theatres in Municipal Corporations, Selection Grade and Special Grade Municipalities which make tickets available online, with simultaneous flow of information of such online sales to the local licensing authorities, entertainment tax authorities and the police authorities. i.e. sub- divisional and district level Commercial Taxes, Revenue and Police officials concerned, shall be eligible for such flexibility. Failure to comply with the conditions shall entail collection of entertainment tax on the maximum rates allowed.

(e) Whenever a show is being organized for raising funds by some organization and it is intended by the theatre management to sell tickets in bunch or in groups, etc., necessary permission should be obtained from the licensing authority. Entertainment tax is payable on the additional amount so collected, if any.

RE,J WP NOS.19046 OF 2014 & BATCH III. Further, for all future permissions in Municipal Corporations and Municipalities, the licensing authority shall also obtain the traffic impact study by a recognized, qualified agency or Govt. body or university for considering permission for construction clearance. IV. Government hereby order the increase of Tax Free Maintenance Charge from Re.1/- to Rs.2/- and from Rs.2/- to Rs.3/- for ordinary and AC /Air Cooled theatres respectively.

V. The following conditions shall be adhered to by all theatres and multiplexes:-

(a).The management/lease holders shall be responsible for ensuring that the relevant conditions stipulated under the Legal Metrology Act, 2009 and Legal Metrology Packaged Commodity Rules, 2011 are followed.

(b).Compliance with provisions under Food Safety & Standards Regulations, 2011 made under Food Safety and Standards Act, 2006 (FSS Act) shall be mandatory for all food canteens/points etc. in theatres / multiplexes.

(c).All managements shall extend the benefit of the provisions of Employee Provident Fund and Miscellaneous Provisions Act, 1952 and Employees State Insurance in favour of all their eligible employees, apart from adhering to Minimum Wages Act, Labour Laws, etc. for the welfare of their employees.

(d).All theatres and multiplexes shall provide two spaces for placing two wheel chairs at convenient spots, with appropriate safety measures such as clamps, etc. for disabled and senior citizens, apart from disabled friendly facilities such as ramps, etc. for accessibility.

VI The conditions for issuing / renewal of license shall be as at Annexure III, and the managements shall also follow such other conditions as may be prescribed by the licensing authorities.

The District Collectors, Licensing Authorities and all concerned shall take further necessary action accordingly.

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6. The above G.O. under challenge was passed by the Government in pursuance of the directions of this Court in W.P.No.20656 of 2011 and batch. The main grievance of the petitioners herein is that the rates fixed by the Government by the impugned G.O. to the areas like Corporation, Municipalities and Grampanchayats are discriminative in nature since the expenditure in all the theatres in Corporations, Municipalities and Grampanchayats is one and the same. The rates fixed by the Government in the areas classified in the G.O. cause hindrance and loss to the exhibitors.

7. During the pendency of the writ petitions, in some of the writ petitions, this Court passed the following interim order:

"In terms of interim orders granted by this Court in similar circumstances, the petitioners shall be permitted to collect the rates as proposed in the application. But the difference amount in the rates collected shall be maintained separately by the petitioners and shall be subject to further orders in the writ petitions. These rates shall not be reduced during the current financial year."

In view of the above directions in some of the writ petitions, the theatre owners are directed to file their representation or application to the authorities concerned informing the rates for which, they want to sell the tickets. The Government is directed to allow them to sell the tickets accordingly. Further, the theatre owners are also directed to pay the taxes proportionate to the rates of the tickets. Accordingly, the writ petitioners are collecting the ticket rates and also paying the taxes to the Government proportionate to the rates of tickets concerned.

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8. During the course of arguments, the following facts were brought to the notice of this Court. The G.O impugned herein was issued prior to the bifurcation of the State of Andhra Pradesh, in the year 2013. The learned Counsel for all the petitioners, Sri H. Venu Gopal, learned Government Pleader for Home for Telangana State and the learned Government Pleader for Home in the State of Andhra Pradesh fairly conceded that in view of the changed circumstances, the GO impugned cannot be made operative. In this regard, they sought certain directions from this Court.

9. It is pertinent to note that there are many changed circumstances coupled with the conversion of some of the theatres to that of multi complexes by raising advanced infrastructure and by meeting the highest maintenance of theatres and in view of the same, the G.O. does not appear to be proportionate, so that it warrants revision in consonance with the changed circumstances as well as the provisions of A.P. Cinema (Regulation) Act 1955. Hence, the present G.O. challenged in the writ petitions can be set aside.

10. Considering the facts and circumstances of the case and the interim orders passed by this Court earlier in some of the writ petitions, this Court is of the view that the present writ petitions can be disposed of with the following directions:

- i) G.O.Ms.No.100, Home (General.A1) Department, dated 26.4.2013 is set aside.
- ii) Both the Governments are directed to constitute their respective committees headed by the respective Principal Secretaries for Home. Insofar as the other members of the Committees are concerned, it is left open to the respective Principal Secretaries for Home to choose the exhibitors, RE,J WP NOS.19046 OF 2014 & BATCH distributors and other members to participate in the committee so as to adjudicate the issues involved in all the writ petitions.
- iii) While taking decision, the committees are directed to consider the welfare of the cine-goers primarily and also the grievance of the exhibitors and distributors and frame the rules in accordance with law on or before 30.3.2017;
- iv) If any decisions are taken and any G.O, is issued prior to 30.3.2017, the same shall become operative in nature.
- v) The petitioners-theatres are permitted to run their respective theatres by collecting their proposed fares. However, it is made clear that the petitioners shall inform to the Authorities concerned as to the ticket rates, which they intend to collect in respect of all classes till adjudication of the issues in question by the respective committees.
- vi) In some of the writ petitions, this Court issued interim orders permitting the petitioners therein to collect the rates as proposed in their applications, and to maintain separate account with regard to the difference amount in the rates collected by them. Those interim orders passed by this Court earlier in some of the writ petitions shall stand superseded. However, the authorities concerned are directed to take a decision with regard to the difference amounts maintained separately by the petitioners pursuant to the interim orders of this Court;

vii) It is made clear that the petitioners in the writ petitions, in which there are no such earlier interim orders, shall approach RE,J WP NOS.19046 OF 2014 & BATCH the authorities concerned and inform them as to the rates of the tickets, which they intend to collect.

viii) All the petitioners are directed to pay the taxes proportionate to the proposed rates of the tickets.

11. With the above directions, the Writ Petitions are disposed of. No costs. Consequently, all the miscellaneous petitions pending, if any, shall stand closed.

____ JUSTICE RAJA ELANGO Dated: 31st October, 2016 Nn.

RE,J WP NOS.19046 OF 2014 & BATCH HONOURABLE SRI JUSTICE RAJA ELANGO W.P.Nos.18779, 19046, 19084, 24651, 24739 OF 2014, 26695, 26718, 27111 OF 2013, 37249, 37309, 27394, 27426, 27690, 27700, 28089, 28096, 28684, 28906, 29172, 34652, 11248, 35097, 38332, 38829, 41009 OF 2014, 200, 441, 445, 1072, 1893, 7167, 7214, 7771, 7772, 7864, 7951, 8160, 8213, 8341, 8344, 8363, 8408, 8434, 8450, 8454, 8479, 8491, 8551, 8569, 8594, 8699, 8776, 9269, 9304, 9309, 9350, 9605, 9628, 9759, 10769, 11628, 11646, 11651, 11826, 13538, 13547 OF 2015, 22795 OF 2014, 13621, 15577, 17845, 1043, 15585, 18090, 19148, 19612, 19691, 20534, 20564, 20596, 20597, 20958, 20990, 22185, 22615, 22823, 23140, 23267, 23571, 23709, 23755, 24065, 24080, 24087, 24279, 24290, 24300, 24531, 24532, 24643, 24828, 25161, 25166, 25881, 26118, 27224, 27990, 28652, 33376, 33462, 34218, 34969, 34982, 34985, 34995, 35241, 36782, 39117, 40125, 40476, 40642, 41058, 42236 OF 2015, 1311, 2169, 2185, 3945, 6588, 7033, 8411, 8419, 8454, 8460, 8517, 8782, 8794, 9536, 9653, 10411, 10414, 10675, 11064, 11324, 11330, 11596, 11599, 12367, 12400, 13142, 16308, 16503, 16504, 17212, 20407, 22020, 22425, 23986, 25294, 26023, 26864, 26993, 27015, 27029, 28552, 29224, 29253, 29259, 35949, 35956, 36027, 36056 and 36260 OF 2016.

31/10/2016 Nn.