IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:20.11.2015

C O R A M

THE HONOURABLE MR.JUSTICE T.S. SIVAGNANAM

W.P.No33064 of 2012

The New Theatres Carnatic
Talkies (P) Ltd., rep., by its Director,
Vijay Balasundaram,
No.191, Big Bazaar Street,
Coimbatore - 641 001. ...Petitioner

Vs.

1. The State of Tamil Nadu,
   Secretary to Government,
   Home (Cinema-I) Department,
   Secretariat, Chennai.

2. The Collector,
   Coimbatore District, Coimbatore.

3. The Additional Commissioner (Cinemas)
   Ezhilagam, Chennai - 600 005. ... Respondents

PRAYER: This writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus and to quash the impugned order in proceedings No.G.O.(2D) No.380, dated 08.11.2012 consequently direct the respondents to enhance the rates of admission.

For Petitioner : Mrs.Narmadha Sampath
For Respondents : Mr.R.Rajeswaran
Special Government Advocate

O R D E R

Petitioner is a Cinema theatre established about 75 years ago in the heart of Coimbatore. As on date, the petitioner theatre has a seating capacity of 973 and the petitioner claims that the facilities offered by them are world class standard. It is further submitted that the quality of the theatre in terms of infrastructure and other amenities is on par with theatres situated in other countries and therefore, the petitioner sought for increase of rate of admission charges. The Government has passed an order in G.O.Ms.No.1265 Home (Cinema) Department dated 31.12.2006 which has provided for revised rates of admission for certain standards and 15 conditions were laid down. The petitioner made a request for enhancement of charges stating that they have complied with all the conditions except that they are not a multiplex, as they have only one screen.

2. The petitioner would further state that the second respondent was bound to take into consideration the statutory rule, viz., Rule 83 (1) (A)(a) and 83 (1)A(d) of the T.N.Cinema Regulation Rules, 1957. Since the request for revision of rates was rejected, the petitioner preferred an appeal before the third respondent and the appeal was dismissed by an order dated 11.11.2008. The petitioner specifically referred to the case of Maharaja Theme Parks, Coimbatore, for whom permission was granted to revise the admission rates though they did not fulfill the conditions stipulated in the Government Order and relaxation was granted in their favour. Since the appeal was rejected, the petitioner preferred a revision before the first respondent. When the revision petition was pending before the first respondent, the petitioner also made a representation on 21.11.2008 to the first respondent. At that time, an inspection was conducted by the District Collector vide letter O.Mu.6883/2008 E2/26.02.2008. By proceedings dated 26.02.2008, the District Collector accepted the facts placed by the petitioner and also certified as regards facilities and amenities provided by the petitioner/Cinema Theatre. However, the revision petition was rejected. Consequently, the petitioner challenged the same by filing writ petition in W.P.No.13851 of 2010 praying to quash the proceedings, GO(D) No.448 dated 28.04.2010 and W.P.No.13852/2010 to quash GO(D) No.436, dated 26.04.2010. Since the prayer in W.P.No.13852 of 2010 was against the original authority, the said writ petition was dismissed and W.P.No.13851 of 2010 was allowed and the matter was remanded for fresh consideration.

3. At this stage, it is worthwhile to refer to the operative portion of the order dated 29.06.2012 which reads as follows:

> 9. The right to exempt from any one of the conditions contained in G.O.Ms.No.1265, dated 31.12.2006 is the prerogative of the Government and not with the licensing authority or the Appellate Authority. To tht extent, the petitioner approached to the licensing authority for exemption is not correct. Therefore, the rejection of the revision is justified. The challenge to the said rejection of the revision is justified. The challenge to the said G.O fails. However, the rejection of the petitioner's application seeking exemption from condition No.1 of G.O.Ms.No.1265, dated 31.12.2006

appears to be totally arbitrary and without application of mind. Merely because the revision has been rejected that by itself is not a ground to reject the application. The other parameters relevant has to be considered as in the case of another theatre. Exception should be considered without discrimination.

10. The various provisions of the Cinema Regulation Rules clearly emphasize the need for revision of rates based on facilities and amenities provided by the theatre. This clearly would go to show that each case should be considered on its merits and the facilities provided will have to be considered in the light of G.O.Ms.No.1265, dated 31.12.2006 for grant of exemption.

11. In this case, the Court finds that in respect of one theatre, inspite of non compliance of condition No.2 relating to number of seats, the Government thought it fit to grant exemption considering the other amenities and facilities provided by the said theatre. As in the referred case, the District Collector in this case has clearly stated that the petitioner has satisfied all the conditions to classify it as a world class theatre except the condition relating to two air conditioned screens. In the present case, it is not disputed that the theatre has 976 seats, which is over and above the maximum number of 800 seats as per the G.O.1265, dated 31.12.2006. This was not considered by the Authority. Further more, the petitioner-theatre is situated in the heart of city of Coimbatore. Apparently, the relative costs on all aspects will be much more than what is available in Rural areas. This should have been considered by the first respondent. To refurnish a large theatre of this extent and to bring it to world class standard, it requires greater investment and that should be considered in the light of the provisions of the Act, which provides for revision of rates and the beneficial government order.

12. When revision of rates can be granted in respect of a theatre in the Rural area by giving exemption, whether the Government can take a converse stand insofar as a city theatre is a poser to the very same officer, who granted benefit to one theatre by granting exemption and declined it to the petitioner. The rejection of the petitioner's claim for revision of rates in respect of the theatre situated in Coimbatore City Corporation appears to be without proper appreciation of the claim besides being arbitrary and discriminatory.

13. In view of the above, the Government Order in G.O.(D) No.448, dated 28.04.2010 refusing to grant exemption is set aside and the matter is remitted back to the Government for reconsideration of the issue for grant of exemption from condition No.1.

14. Since this Court has held that exemption or revision sought for before the original authority is not correct, the rejection of revision is upheld and the writ petition challenging the G.O.Ms.No.436, dated 26.04.2010 is dismissed.

15. The fact that in G.O.Ms.No.436 dated 26.04.2010 the revision was rejected and writ petition challenging it is dismissed should not be an impediment in considering the claim for exemption as it is an independent claim.

16. The Government is required to hear and pass final order on the exemption application expeditiously, preferably within a period of six weeks from the date of receipt of a copy of this order.

Pursuant thereto, the impugned order has been passed.

4. The learned counsel for the petitioner elaborately referred to the factual matrix and submitted that the impugned order is totally ultravires as the respondents have failed to consider all the contentions raised by the petitioner in the order referred to supra. It is further submitted that the reason assigned in the impugned order is totally unsustainable and the petitioner could not have been discriminated when relief was granted to Maharaja Themes Park, Coimbatore, by granting

exemption of certain conditions in the Government Order for being entitled to the benefit of revision aspects.

5. The learned Special Government Pleader appearing for the respondent, after narrating the facts, has drawn the attention of this Court to para - 16 of the counter affidavit and submitted that the petitioner theatre does not fulfill the conditions of G.O(Ms)No.1265, Home(Cinema-I) Department, dated 31.12.2006, as they do not have two or more fully air conditioned theatres and if such condition is relaxed in favour of the petitioner, it will amount to discrimination against others for whom rules have been framed.

6. After hearing the learned counsel for both the parties and after perusing the materials placed on record, it is evidently clear that the impugned order is contrary to the scope of the order and directions issued by this Court in the earlier writ petition filed by the petitioner referred supra. This Court, while setting aside the earlier order passed, observed that the various provisions of Cinema Regulation Rules clearly emphasises the need for revision of rates based on the facilities and amenities provided by the theatre which goes to show that each case should be considered on merits and the facilities provided will have to be considered in the light of the G.O(Ms)No.1265, Home(Cinema-I) Department, dated 31.12.2006. Further this Court, in para-11 of the said order had specifically observed that in respect of one theatre, in spite of non-compliance of condition No.2, relating to the seating capacity, the Government thought it fit to grant exemption, considering the amenities and facilities provided by the theatre. Pointing out this feature of discrimination, this Court observed that in the petitioner's case, the District Collector has clearly stated that the petitioner has satisfied all the conditions to classify it as a world class theatre except the condition relating to number of air conditioned screens. Further, it was pointed out that the petitioner's theatre has 976 seats, which is over and above the maximum of 800 seats as per G.O(Ms)No.1265, Home(Cinema-I) Department, dated 31.12.2006. Pointing out that this aspect was not considered by the authority while passing the earlier order and that the theatre is situated in the heart of Coimbatore City and considering the fact that the relative costs on all aspects would be much more than what is available in the rural areas, this Court felt that the first respondent should have considered these aspects. Further, it was observed that to refurbish a large theatre of this extent and to bring it to a world class standard, requires great investment and that should be considered in the light of provisions of Act which provides for revision of rates and the beneficial Government Order. Further, it was pointed out that the Government cannot take a different stand in so far as the city theatre is

concerned and that the very same officer, who granted benefit to one theatre by granting exemption cannot decline it to the petitioner. With these observations, the matter was remitted to the authority.

7. In my view, some of the observations made by this Court in the earlier order, are in fact binding upon the authority. However, while passing the impugned order, the authority has ignored all the observations and rejected the petitioner's plea solely on the ground that it would cause embarrassment to the Government if exemption is granted to the petitioner as all other theatre owners would approach them. However, this Court, fails to understand as to under what circumstances exemption was granted to the other theatres and if at all, such exemption would cause embarassment to the Government, how they can revise the rates. It is to be pointed out that the revision of rates is not automatic. The authority has to satisfy himself that for revising the rates the standards are equally met. The Collector, who is the licensing authority has to certify the capacity of the theatre and other aspects. In this case, the District Collector has inspected the theatre and had given his report. The first respondent could not have ignored all these matters and pass an order mechanically rejecting the request. In my opinion, this matter requires to be reconsidered strictly in the light of the observations/directions of this Court in the earlier writ petitions.

Accordingly, this writ petition is allowed. The impugned order is quashed and the matter is remanded to the first respondent for fresh consideration. The first respondent shall consider the case afresh by taking into consideration the observations and directions issued above and uninfluenced by any observations made in the earlier order dated 08.11.2012 and take a final decision in the matter after affording an opportunity of personal hearing to the petitioner, and pass appropriate orders within a period of four months from the date of receipt of copy of this order.

Gv

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To
1. The State of Tamil Nadu,
Secretary to Government,
Home (Cinema-I) Department.
Secretariat, Chennai.

2. The Collector,
   Coimbatore District, Coimbatore.

3. The Additional Commissioner (Cinemas)
   Ezhilagam, Chennai - 600 005.

+ 1 cc to M/s.Narmadha Sampath, Advocate SR 63204

+ 1 cc to Govt.Pleader, High Court, Madras SR 63199

bvr(co)
prk30/11

W.P.No33064 of 2012