

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

W.P.Nos.22056, 9349 and 8906 of 2012

W.P.No.22056 of 2012

Between:

Inox Leisure Limited

... Petitioner/Appellant (s)

And

The State of Andhra Pradesh

and 3 others

... Respondent (s)

DATE OF JUDGMENT PRONOUNCED: 21.07.2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

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| 1 | Whether Reporters of Local newspapers
may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be
marked to Law Reports/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see
the fair copy of the Judgment? | Yes/No |

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HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.Nos.22056, 9349 and 8906 OF 2012

COMMON ORDER:

These writ petitions are filed declaring the action of the respondents in enhancing the trade license fee for the petitioners' Cinema Theatre, as illegal and arbitrary and for a consequential direction to set aside the Resolution No.18 dated 16.04.2010 of Municipal Corporation of Vijayawada in respect of Cinema Halls.

Since the subject matter of the writ petitions is one and same, they are heard together and are being disposed of by this common order.

The case of the petitioners is that they are running Cinema Theatres in various places in Vijayawada after obtaining Cinema Exhibition license from the competent authority i.e., Joint Collector, under Cinematography Act. The license granted by the Joint Collector enables the petitioners to conduct exhibition of Cinemas in accordance with the terms and conditions imposed under B-form license for exhibition of motion pictures. However, though there is no requirement of obtaining trade license from the Municipal Corporation the respondent authorities have been insisting the petitioners to obtain trade license and have been demanding for payment of trade license fee. The Council of Municipal Corporation of Vijayawada unilaterally passed resolution dated 16.04.2010, enhancing the trade license fee on the basis of monthly rental value of the Cinema Theatres. It is also stated that there are no guidelines, Rules, schedule prescribing levy of trade license fee. The legislature has delegated its essential function entrusted to it by Constitution, determining the procedure and the limits of taxes, fee that can be imposed by the respondent Municipal Corporation in as much as it has failed to formulate policy, provisions, rule and guidelines prescribing the minimum and maximum amount of fee that can be levied by the Municipal authorities safeguards/fetters are the procedure for levy and assessment of fees/taxes resulting in excessive delegation of legislative functions. The power to fix rates/fee

in the absence of ceiling being prescribed the Act is arbitrary and contrary to the judgment of the Hon'ble Supreme Court.

Counter affidavit is filed by the respondents in W.P.No.22056 of 2012 stating that as per the Hyderabad Municipal Corporation Act (for short 'the Act') the petitioner has to pay D & O trade license. It is also stated that Council of Vijayawada Municipal Corporation in its resolution No.18/18, dated 16.04.2010 accepted the enhancement of trade license for 23 different trades by suggesting certain modification in certain trades as mentioned in the list under Section 622(2) of the Act. Basing on the resolution the respondents 2 and 3 fixed the trade license with a reasonable enhancement for 23 different trades and also published in newspapers. The petitioner never raised any protest with regard to the same in writing. It is further submitted that under Section 70-G of the Act, the Special Officer has got all powers to decide the trade license fee and that the resolution passed by the Special Officer for enhancing the trade license is proper.

Learned counsel for the petitioners contend that though the impugned notices are issued under Sections 521, 516, 539, 622 and 623 of the Act, none of the provisions authorise the respondents to impose trade license fee on the petitioners. He further submits that Section 6 of the A.P.Cinemas (Regulation) Act, 1955 deals with grant of license and since the petitioner have obtained license under A.P. Cinemas (Regulation) act, no further license is required under Municipal Corporation Act.

In support of his contentions he relied on judgments reported in ***K.C. Varadachari, Partner, Madras Oil Mills and Products v. The State of Madras, by the Secretary to the Government of Madras, Food and Agriculture Department***^[1], ***M/s. Mohta Ispat Limited, Ratlam v. The Chief Municipal Officer, Ratlam and others***^[2], ***Corporation of Calcutta v. Liberty Cinema***^[3], ***Y. Venkateswar Rao***

and others v. Prohibition and Excise Superintendent, Khamman District and another ^[4]

On the other hand, learned Standing counsel for the 2nd respondent submits that

Section 6 of the A.P. Cinemas (Regulations) Act, 1955 reads as follows:

“6. Special Provisions for buildings constructed or reconstructed solely for cinematograph exhibitions:

(1) Nothing contained in the Hyderabad Municipal Corporations Act, 1955 (Act II of 1956), or in the Andhra Pradesh (Andhra Area) Places of Public Resort Act, 1888 (Act II of 1888) or in the Andhra Pradesh (Andhra Area) District Municipalities Act, 1920 (Act V of 1920) or in the Andhra Pradesh (Andhra Area) Town Planning Act, 1920 (Act VII of 1920), or in the Andhra Pradesh (Andhra Area) District Boards Act, 1920 (Act XIV of 1920) or in the Andhra Pradesh (Andhra Area) Village Panchayats Act, 1950) in regard to-

(a) the grant of permission for the construction or reconstruction of a building, or

(b) the grant of licence for the use of any place or building for any purpose for which such licence is required under those Act, or

(c) the grant of permission to instal any machinery in any place or building,

Shall apply to the contruction or reconstruction of, or the use of, or the installation of any machinery in any place or building to be used exclusively for the holding of cinematograph exhibitions; and in every such case, an application for licence or permission refered to in any of the Clauses (a) to (c) above shall be made to the licensing authority under this Act, in accordance with the rules made in this behalf under this Act.

(2) Subject to the control of Government and to any rules made in this behalf, the licensing authority, after making such inquiry as it deems fit and consulting the Chief Executive Officer (by whatever designation he may be known) of the authority concerned, may, for reasons to be recorded either grant or refuse to grant the licence or permission applied for.”

In ***A.P. Bankers & Pawn Brokers’ Association v. Municipal Corporation of Hyderabad*** ^[5], the Apex Court held as follows:

“Merely because a pawnbroker or a moneylender is

likely to set up a shop in the thick of a residential locality or in a crowded place would be no ground for the Commissioner to come to a conclusion that the entire trade or occupation of moneylending and pawnbroking is dangerous or likely to create nuisance. It is clarified that this Court is not saying that the Commissioner cannot under Section 521(1)(e)(ii) notify a particular trade or operation, i.e., include all persons carrying on that particular trade or operation.”

In view of law laid down in all the above cited decisions, the provisions under Section 521 have no application to the trade of the petitioners.

A perusal of the other provisions under Section 403, 404 and 624 and 625 reads as follows:

Section 403 and 404 of the Act reads as follows

403. Licence for sale in public places:

Except under and in conformity with the terms and provisions of a licence granted by the Commissioner in this behalf, no person shall hawk or exposed for sale in any public street any article whatsoever, whether it be for human consumption or not.

404. Licenses for use of skill in handicraft of rendering services for purposes of a gain in public place or street: Except under and in conformity with the terms and provisions of a licence granted by the Commissioner in this behalf, no person shall, for purposes of gain, use his skill in any handicraft or in rendering services to and for the convenience of the public in public place or public street.

Similarly Section 624 and 625 of the Act reads as follows”

624. Licence for sale in public place: Except under and in conformity with the terms and provisions of a licence granted by the Commissioner in this behalf, no person shall use nay public place or any public street for the purpose of hawking or exposing for sale, any article whatsoever whether it be for human consumption or not.

625. Licence for use of skill in handicraft or rendering services for purposes of gain in public place or street: Except under and in conformity with

the terms and provisions of a licence granted by the Commissioner in this behalf, no person shall, for purposes of gain use and public street for the purposes of using his skill in any handicraft or in rendering service to and for the convenience of the public.

The above said provisions deal with licenses to do business in public places and streets. In the present case, petitioners are not doing business in public places or streets, as such the said provisions will not justify the issuance of impugned notices.

When the very basis of imposition of trade license is set aside, the question of enhancement of trade license fee may not be relevant to the present issue.

Accordingly, these writ petitions are allowed. No costs. As a sequel, miscellaneous petitions pending if any, shall stand closed.

A.RAJASHEKER REDDY,J

Date: 21.07.2015
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[\[1\]](#) 1952 (2) MLJ 410

[\[2\]](#) AIR 1981 MP 62

[\[3\]](#) AIR 1965 SC 1107

[\[4\]](#) AIR 2001 SC 1356

[\[5\]](#) (2001) 3 SCC 646