

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of Decision: 25 .01.2018

(i) Civil Writ Petition No. 15076 of 1995

M/s Navdeep Theatres (P)Ltd., City Centre, AmritsarPetitioner

versus

State of Punjab and anotherRespondents

(ii) Civil Writ Petition No. 9943 of 1996

M/s Navdeep Theatres (P)Ltd., City Centre, AmritsarPetitioner

versus

State of Punjab and anotherRespondents

(iii) Civil Writ Petition No. 4389 of 2000

M/s Navdeep Theatres (P) Ltd., City Centre, AmritsarPetitioner

versus

State of Punjab and othersRespondents

**CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE AVNEESH JHINGAN, JUDGE**

Present: Mr. Alok Mittal, Advocate, for the petitioners.

Mr. P.S. Bajwa, Additional Advocate General, Punjab.

AVNEESH JHINGAN, J.

This order shall dispose of Civil Writ Petitions Nos. 15076 of 1995, 9943 of 1996 and 4389 of 2000 as common questions of law and facts are involved in all the petitions.

2. The petitioner owns three cinemas theatres in Amritsar named Suraj Cinema, Chanda Cinema and Tara Cinema. The first two theatres started in the year 1977 and the third theater started in the year 1981. The licences for the said theatres were issued by the licensing authority under the Punjab Cinemas (Regulation) Act, 1952 (hereinafter referred to as 'the 1952 Act').

3. The petitioner's basic grievance is to the orders passed by the District Magistrate-cum-licensing authority, Amritsar under the 1952 Act refusing to reduce the seating capacity and refusing to reduce the rates of tickets in the said theatres resulting in an increase in the rate of tax under the Punjab Entertainments Tax (Cinematograph Shows) Act, 1954 (hereinafter referred to as 'the 1954 Act'). The petitioner has also challenged the recovery notice for the amount due from 01.10.1995 to 31.01.1999.

4. It is not necessary in these writ petitions to consider the challenge to the vires of the amending Ordinance of 1994 and the amendment Act of 1994 by virtue of which Section 3D was added to the 1954 Act.

5. The petitioner, in order to start the theaters, had to apply for a licence under the 1952 Act. The licensing authority on compliance of the requirements of the statute, issued the licence on the terms and conditions stipulated therein. It would be pertinent to note that the licence is issued in 'Form-A', as prescribed under the Punjab Cinema (Regulation) Rules, 1952. In the said licence, the class of accommodation, number of persons which may be admitted in the class and rates of admission are duly mentioned. The number of seats and price of tickets prescribed cannot be amended or altered

without the prior approval of the licensing authority.

6. The 1954 Act deals with the levy and collection of entertainment tax. By an amendment of 1994, apart from other amendments, section 2 was amended, sections 3B to E were inserted and section 15A was substituted.

7. Before proceeding further, it would be appropriate to reproduce the following provisions of the 1952 Act and the Punjab Cinema (Regulation) Rules 1952:-

“Section 4. Licensing Authority.- The authority having power to grant licences under this Act (hereinafter referred to as the licensing authority) shall be the District Magistrate:

Provided that the Government may by notification in the official Gazette, constitute for the whole or any part of the State, such other authority as it may specify therein to be the licensing authority for the purposes of this Act.

Section 5. Restrictions on powers of licensing authority.-(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 precautions have been taken in the place, in respect of which the license is to be given to provide for the safety of the persons attending exhibitions therein.

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

[(3) Any person aggrieved by the decision of the licensing authority -

(i) refusing to grant a licence under this Act; or
(ii) approving the classification of seats for or the rates of admission to any cinematograph exhibition under the rules made under this Act; may within such time as may be prescribed, appeal to the Government or to such officer as the government may specify in this behalf and the appellate authority may make such

order as it thinks fit.]

(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 intended for educational purposes, films dealing with news and current events, documentary films or indigenous films secure an adequate opportunity of being exhibited, and where any such directions have been issued, those directions, shall be deemed to be additional conditions subject to which the licence has been granted.

Section 9. Power to make rules.-The Government may, by notification in the official Gazette, make rules -

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

[(aa) prescribing fees for the grant and renewal of licences, for the issue of duplicate licence and other documents and for the inspection of licensed premises.]

(b) providing for the regulation of cinematograph exhibitions for securing the public safety;

(c) prescribing the time within which and the conditions subject to which an appeal under sub-section (3) of Section 5 may be preferred.

Rule 24. Accommodation.-(i) The total number of spectators accommodated in the building shall not exceed 20 per hundred square feet of the area available for sitting and standing or 20 per 133-1/2 hundred square feet of the overall area of the space in the auditorium.

(ii) A notice showing the number of spectators permitted by the conditions of the licence to be admitted to any one part of the building shall be exhibited at a prominent place either of the entrance of the building or in the auditorium.

Rule 25 Seating-(i) The seating in the building shall be arranged so that there is free access to exits.

[The space assigned for each person shall not be not be less than 2'-10" deep in case of push back seats, 2'-4", deep where fixed backs are provided and not less than 2' deep where backs are not provided and not less than 1' 8" wide where arms are provided and 1'-6" where arms are not provided.]

[Note 1-The seats in each alternate row shall be staggered in a manner that the line of vision is not obstructed and that the angle of vision does not exceed 35 degree.

Note 2.-The slope of the floor of the auditorium shall have average gradient of 1" in 18" except in case of the cinemas built before 1st February, 1958.

Note 3.-In the case of cinemas with dual inclined slopes in the floors of the auditorium the rear slope shall be 1" in 18" while the front incline shall be 1" in 24".]

(iii) The rows of seats shall be so arranged that there is a clear space of not less than 12" between the back of one seat and the foremost portion of the seat arm or behind, measured between perpendiculars.

(iv) All seats, except those in private boxes, shall be securely fixed to the floor, and if battened together or made in links, the complete link shall be firmly attached to the floor.

(v) [The minimum distance between the cinematograph screen and the front row of seats shall be:

(i) equal to the width of the screen subject to a minimum of 25 feet in case of cinemas equipped with screens up to 30 feet wide; and

(ii) equal to $\frac{3}{4}$ of the width of the screens subject to a minimum of 30 feet in case of the cinemas fitted with screens exceeding 30 feet in width.

Note.-The space between the screen and the front row of seats shall be left vacant according to the width of the screen installed irrespective of the consideration whether the whole or only a part of the screen is made use of.]

(vi) [The lower edge of the picture as projected on the cinematograph screen shall be at a height varying from 5'-6" to 7' above the level of the floor of the auditorium at the front row of seats depending upon the length of the auditorium.]

(vii) [(a) Every row of seats in the auditorium shall be assigned a specific distinguishing mark such as 'A', 'B', 'C' and so on and every seat in each row shall be serially numbered. The serial number shall be inscribed at a prominent place on the seat in such a manner that the seat can be easily located.

(b) The license shall ensure that on every ticket which any booking clerk issues for any cinematograph exhibition a separate seat number is marked.

The purchaser of the ticket shall be entitled to occupy that seat bearing the serial number marked on the ticket. The serial number of the seat shall be marked on that portion of the ticket which is to be retained by the purchaser so that it can be produced for inspection in case of any doubt or on demand.]"

The licence under section 5 is issued as per FORM-A.

Condition 4 of the “Schedule of Conditions” therein reads as follows:-

“[4(i) (This condition may be omitted in the case of temporary licences. The licensee shall observe the classification of the seats and the prices therefor, or 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	No of persons which may be admitted into the class	Rate of admission
------------------------	--	-------------------

(The licensing authority will here enter the number of persons who may be admitted into the several parts of the auditorium, having special regards to the provisions of rule 24).

xx

xx

xx

xx

(emphasis supplied).”

8. It is important to note three things. Under Section 4 the District Magistrate is the licensing authority. The licence stipulates the seating capacity in Form-A. The seating capacity is stipulated in the license having regard inter alia to the provisions of Rule 24. These provisions of the 1952 Act and the Rules including condition No.4 of the 'Schedule of Conditions' in FORM-A imply that even the number of seats cannot be amended or altered in any way without the prior approval of the licensing authority.

9. The relevant provisions of the 1954 Act are as follows:-

"Section 2 (e)"Commissioner means the Excise and Taxation Commissioner, Punjab, or any other Officer empowered by the State Government by notification, to exercise the powers of the Commissioner under this Act;

xx xx xx

Section 2(g) "gross collection capacity per show" means the notional aggregate of all payments for class-wise admission, to a cinematograph show, which the proprietor would realize, if all seats as determined by the District Magistrate, are occupied in a Cinema house and calculated at the rates specified by the District Magistrate for admission to a class;

xx xx xx

Section 2(k) "seating capacity" means the class-wise total number of seats approved by the District Magistrate in the case of a cinema house existing on the first day of June, 1994 and in the case of a cinema house coming into operation thereafter, that class-wise total number of seats, as may be approved by the District Magistrate;

Section 3D. Prohibition to reduce seating capacity.-No proprietor of a cinema house shall be allowed to reduce the seating capacity once permitted at the time of grant of licence by the District Magistrate except with the prior approval of the Commissioner.

Section 15A (1) An appeal from every original order passed under this Act or the rules made thereunder shall lie.-

(i) if the order is made by an assessing authority or an Assistant Excise and Taxation Commissioner incharge of the District, to the Deputy Excise and Taxation Commissioner;

(ii) if the order is made by the Deputy Excise and Taxation Commissioner, to the Commissioner.

(2) No appeal shall be entertained unless it is filed within thirty days from the date of communication of the order appealed against, or within such longer period as the appellate authority may allow, for reasons to be recorded in writing.

(3) No appeal shall be entertained by an appellate authority unless such appeal is accompanied by satisfactory proof of the payment of the tax or of the penalty, if any, imposed or of both, as the case may be:

Provided that if such authority is satisfied that the proprietor is unable to pay the tax assessed or the penalty, if any, imposed on both, he may, for reasons to be recorded in writing, entertain an appeal without the tax or penalty or both having been paid or after part payment of such tax or penalty or both.]”

10. The petitioner in order to seek permission for reduction of seating capacity moved applications to the licensing authority which were rejected by the District Magistrate-cum-licensing authority. The application for reduction of rates for admission to the cinemas was also rejected. Aggrieved of the said rejection, the present petitions have been filed. We have come to the conclusion that the petitioner must avail the remedy of an appeal under section 5(3) of the 1952 Act as there are various facts to be considered. Moreover, the reduction of the seating capacity granted under the 1952 Act is subject to the approval of the Commissioner under the 1954 Act. It is appropriate, therefore, for the petitioner to have the issue first

decided in an appeal under the 1952 Act.

11. We will now analyze the provisions of the two Acts and the Rules and the interplay between them to determine the alternate remedy available to the petitioner. In our view, it is an appeal under section 5(3) of the 1952 Act and under section 15A of the 1954 Act.

12. From the perusal of the above provisions, it is evident that for setting up cinemas, the 1952 Act applies. The licence is issued under the 1952 Act and the seating capacity is determined while issuing the licence. The power to amend or alter the seating capacity and the rates of admission is with the licensing authority i.e. the District Magistrate.

Section 5(3) of the 1952 Act provides for an appeal inter-alia against the order of the licensing authority refusing to grant a licence. This would include an order refusing an application for altering or amending the seating capacity in a cinema. The District Magistrate who is the licensing authority has to stipulate the seating capacity. If the District Magistrate determines the seating capacity contrary to the application as far as the applicant is concerned it amounts to his refusing the grant of a license. Section 5(3)(i) includes cases where the seating capacity sought by the applicant is not sanctioned to any extent. It can hardly be suggested that section 5(3)(i) contemplates only a case where a license is refused by not issuing it at all. The impugned order refusing to reduce the seating capacity for the purposes of section 5(3)(i) is, therefore, an appealable order.

13. The 1954 Act is a statute for taxation purposes. The seating capacity and the rates of admission determined by the District Magistrate subject to the approval of the Commissioner forms the basis for calculating

the tax. Thus the District Magistrate must first allow or reject an application for reducing the seating capacity. If the application is allowed by the District Magistrate in exercise of powers under the 1952 Act it affects the assesses' rights under the 1954 Act only if the Commissioner approves the same for the purpose of and under the 1954 Act. In other words, the question of the Commissioner's approval under the 1954 Act arises only where the District Magistrate reduces the seating capacity under the 1952 Act. As in the present case the District Magistrate/licencing authority has refused the application under the 1952 Act the question of the Commissioner's approval under section 3 D of the 1954 Act does not arise. Accordingly, there is no appealable order under section 15A of the 1954 Act.

14. In the present petitions, the grievance of the petitioner is against the orders passed by the licensing authority under the 1952 Act which are appealable under section 5(3) of the 1952 Act.

15. The petitions were pending in this Court for several years. In the circumstances, if the petitioner files appeals by 28th February, 2018, the same be decided by the Appellate Authority on merits.

The writ petitions are disposed of accordingly.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(AVNEESH JHINGAN)
JUDGE

25.01.2018
reema/ravinder

Whether speaking/reasoned
Whether Reportable:

√ Yes/No
√ Yes/No