

HIGH COURT OF ANDHRA PRADESH: AMARAVATI
HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA, CHIEF JUSTICE
&
HON'BLE MR. JUSTICE D.V.S.S. SOMAYAJULU

I.A.No.1 of 2022 in WRIT PETITION No.16346 OF 2022

And

I.A.No.6 of 2022 in WRIT PETITION No.1249 of 2022

And

I.A.No.2 of 2022 in WRIT PETITION No.16915 of 2022

(Through physical mode)

W.P.No.16346 of 2022:

Bigtree Entertainment Private Limited having Registered Office at: Ground Floor, Wajeda House, Behind Gazebo House, Gulmohar Cross, Road NO.7, Juhu Scheme, Mumbai – 400049, Maharashtra Through its Authorised Representative, Mr. Sandeep Annojwala,

.. Petitioners

Versus

The State of Andhra Pradesh Represented by its Secretary law and Legislature Department Secretariat Building, Velagapudi, Guntur District – 522503, Andhra Pradesh and four others

.. Respondents

Counsels for the Petitioners : Mr. Abhishek Manu Singhvi, senior counsel for Mr. Sai Sanjay Suraneni

Sri C.V.Mohan Reddy, senior counsel for Mr. Avinash Desai

Mr. N. Ashwani Kumar

Counsel for the respondents : The Advocate General

ORDER**Dt: 01.07.2022***(per D.V.S.S.Somayajulu, J)*

Writ Petition No.16346 of 2022 is filed by the petitioner seeking a declaration that Section 5A of the Andhra Pradesh Cinemas (Regulation) Act, 1955 (for short “the Act”) introduced vide Andhra Pradesh Cinemas (Regulation) (Amendment) Act 2021 (for short “Act No.12 of 2021”) as arbitrary, unconstitutional, to declare all further actions taken pursuant thereto against private online ticket booking platforms as arbitrary, unconstitutional etc., and to declare Rule 17A and 17B of the Andhra Pradesh Cinemas (Regulation) Rules 1970 (for short “the Rules) issued by G.O.Ms.No.69, dated 02.06.2022 as arbitrary, illegal and for other reliefs.

2. W.P.No.1249 of 2022 is filed questioning the Act 12 of 2021 and G.O.Ms.No.142, dated 17.12.2021, whereas W.P.No.16195 of 2021 is also filed questioning the Act 12 of 2021, introducing Section 5A, as illegal, unconstitutional etc., and to declare the consequential Government Orders, as arbitrary, illegal etc. All the matters were heard together.

3. Sri Abhishek Manu Singhvi, learned Senior Counsel representing the petitioner in W.P.No.16346 of 2022 took the lead in arguing the matters. Sri C.V.Mohan Reddy, learned senior counsel appears for the petitioners in W.P.No.1249 of 2022, whereas Sri N.Ashwani Kumar, learned counsel appeared for the writ petitioners in W.P.No.16915 of 2021.

4. Learned Advocate General Sri S. Sriram, assisted by the learned Government Pleader for Home, appeared for the respondents.

5. Learned Senior Counsel Sri Abhishek Manu Singhvi, pointed out that the Government of Andhra Pradesh introduced Section 5A in the Act by a L.A.Bill No.22 of 2021 by which every licensee is obligated to sell the cinema tickets through an online ticket platform of the Government Company only on such terms and conditions as may be prescribed. This section is also the subject matter of the challenge in W.P.No.1249 of 2022. Learned senior counsel points out that thereafter on 02.06.2022 G.O.Ms.No.69 was introduced by which the Rules were framed. He laid particular emphasis on Rule 17(A) (1), (2), (3) and (4) of the Rules, which are reproduced hereunder:

“Rule-17(A)

1) Nodal Agency - means the Andhra Pradesh State Film Television and Theatre Development Corporation (APSFTVTDC), a Government Company, authorized to Procure, Design, Develop, Integrate and maintain computerised services of Online Ticketing solution for ticketing for the Cinema theatres and cine goers in Andhra Pradesh under online system under Section 5A of the Act.

2) The Nodal Agency shall procure, design, develop and undertake all the allied activities to maintain a platform through the internet or emerging technologies throughout the State to enable online ticketing solution for the cinema theatres and cine goers. The Nodal Agency shall be entitled to engage the services of a service provider to operate the portal, gateway and the platform.

3) The Nodal agency through its service provider, shall undertake the sale of cinema tickets directly to the cine goers

through its platform on collection of a service charge not exceeding 2% of the rate of admission into cinema theatres.

4) The Ticket Aggregators/cinema theatres who are already engaged in the business of providing cinema tickets through their respective online platforms, shall continue such business only through the gateway created and operated by the nodal agency at a service charge not exceeding 2% on the rate of admission into cinema theatres.”

6. Learned senior counsel submits that Rule 17(A) (2), (3) and (4) constitute a composite whole by virtue of which the entire ticketing activity for purchase / for sale of cinema tickets is sought to be controlled by the Government. He points out that the 3rd respondent was appointed as a Nodal Agency to maintain the platform throughout the State of Andhra Pradesh for online ticketing. It is also permitted to engage the services of a Service provider (in this case the 5th respondent) for this purpose. The Nodal Agency as per Rule 17(A)(3) shall undertake the sale of cinema tickets directly to the cine-goers and a maximum service charge not exceeding 2% of the rate of admission, will be collected. Learned senior counsel points out that existing ticket aggregators like the writ petitioner who is already in this business can continue their business only through gateway provided for by the 3rd respondent and also by paying service charge not exceeding 2% on the rate of admission. Learned senior counsel submits that while the State can enter into this business, it cannot be both the facilitator and competitor. He points out that the existing ticket aggregators can only continue their business through the Nodal Agency and the gateway provided by the Nodal Agency (3rd respondent). They also have to pay the service charge of 2% on the

rate of admission. On the other hand, the Nodal Agency, and its service provider i.e., the 3rd and 5th respondents, can also directly sell the tickets to the cinema going public. Learned senior counsel, therefore, submits with the aid of numerical examples that the petitioner will end up charging more from the customer since it has to add upto a maximum of 2% on the rate of admission and its service charge and this is passed on to the consumer. On the other hand, the State without investing anything in the software or the hardware will be able to sell the tickets directly to the consumer. Therefore, learned senior counsel submits that the petitioner's right to carry on its trade and profession is being curtailed and undue advantages are being given to the Nodal Agency and its service provider (5th respondent). The learned senior counsel submits that a level playing field is not created as the service provider, i.e. the 3rd / 5th respondent can sell the tickets at lower price and that the consumers / cine-goers will naturally migrate from the platform created by the petitioners. Learned senior counsel submits that the petitioners are doing business from 1995 and had developed extensive software and hardware and that this entire investment will be lost. He also argues that the issue of whether the rate of admission "includes the service charges or not" is still pending judicial adjudication. He relies upon the order passed in I.A.No.1 of 2022 in W.P.No.7094 of 2022 and also argues that whenever the State sought to interfere in this business, the Courts have stepped in and granted orders. He relies upon the order in W.P.No.2122 of 2018 and also the order in **Beyond Basiks**

Infotech Private Limited v State of A.P.,¹ to argue that the new rules etc., are introduced to get over the judicial orders passed earlier.

7. Learned senior counsel also submits that there is no rational basis for the introduction of this Section or the Rules. By pointing out to the statements and objects, learned senior counsel submits that there is no tangible connection or rational basis between the purposes as stated in the statements and objects and the Section is amended or in the Rules. He points out that the online system is proposed to be introduced to reduce the pollution and help in checking black-marketing, tax evasion, collection of GST and service taxes. It is argued by the learned senior counsel that all of these are matters of policing and / or checking under the relevant statutes, which give ample power to the State to curb the black-marketing or the evasion of taxes. Therefore, he submits that the Act No.12 of 2021 is not introduced with any rational purpose and is in fact a method to gain control over the online booking system by the State. He submits that the Act does not empower the State to control these aspects of the booking of tickets and in particular the service charges/convenience charges that are levied.

8. Learned senior counsel submits that the effect of any such Rule or amendment must be seen and urges that it alters the level playing field must be seen. He relies upon the judgement of Hon'ble Supreme Court of India in judgement reported in **Mohammad Yasin v The**

¹ 2012 SCC Online AP 691

Town Area Committee, Jalalabad and Others² which held as follows:

“5. Learned counsel, however, contends and we think with considerable force and cogency - that although, in form, there is no prohibition against carrying on any wholesale business by anybody, in effect and in substance the bye-laws have brought about a total stoppage of the wholesale dealers business in a commercial sense. The wholesale dealers, who will have to pay the prescribed fee to the contractor appointed by auction, will necessarily have to charge the growers of vegetables and fruits something over and above the prescribed fee so as to keep a margin of profit for themselves but in such circumstances no grower of vegetables and fruits will have his produce sold to or auctioned by the wholesale dealers at a higher rate to of commission but all of them will flock to the contractor who will only charge them the prescribed commission.”

9. Learned senior counsel also submits that this entire exercise is essentially a camouflage to overcome the judicial orders, which were passed earlier.

10. Coming to the issue of interim relief, learned senior counsel states that the petitioners have more than *prima facie* case in their favour. The very source of power of the State is a matter of debate according to the learned senior counsel. Apart from that he states that the petitioners are being forced to use the service of a competitor for the purpose of conducting their business and at the same time they are being compelled to pay service charges to the competitor. He also submits that there is no rational basis for the enactment of the law and it amounts to direct curtailment of the petitioners' right to carry

² AIR 1952 SC 115

on their business and trade. He points out that the Rules are palpably discriminatory and violative of Article 14 of the Constitution of India. Coming to the balance of convenience, learned senior counsel argues that greater harm will be caused if the proposed Rules are implemented from the 2nd July, 2022. The petitioners, who have been in business since 1995 and have entered into contracts with various exhibitors, will face serious repercussions in their business and ongoing business agreements will be totally disturbed. He submits that if the objection of the Government was only to secure the data to assess tax evasion etc., the same could have been obtained, but instead of doing so, they are trying to compel the petitioners to transact their daily business through respondents 3 and 5. On the other hand, he submits that if the interim order is granted, the entire issue, including the vires of the enactment etc., can be decided through comprehensive arguments and no loss, monetary or otherwise, will be caused to the Government. As far as irreparable loss is concerned, learned senior counsel submits that all the ongoing contracts entered into by the petitioners with their exhibitors will be disturbed and the losses will be heavy and repatriation and other issues will arise which cannot be calculated in terms of money. Therefore, learned senior counsel prays that it is a fit case in which this Court should exercise its discretion for granting an interim order as prayed for.

11. Sri C.V.Mohan Reddy, learned senior counsel appearing for the Multiplex Association of India adopts the arguments of the learned senior counsel Sri Abhishek Manu Singhvi in all respects. He also

draws the attention of this Court to the earlier orders that were passed by the High Court of Andhra Pradesh in ***Beyond Basiks Infotech Pvt. Ltd., v State of Andhra Pradesh***³.

Learned senior counsel also states that A.P. Cinema Regulation Act permits monopolisation of the online cinema ticketing by the Government of Andhra Pradesh and therefore he states that Section 5A of Act No.12 of 2021 is *ultra vires*. He also points out that the impugned G.O.Ms.NO.142, dated 17.12.2021, which is issued pursuant thereto, is *ultra vires*. Learned senior counsel submits that the issues of law and fact raised include the point about the very power of the Government to enter into and/or to regulate this area etc., should be examined further in a detailed argument and therefore the interim order is necessary. He points out that Rule 17(A) (7) of the Rules mandates that every cinema theatre in the State should comply with Rule 17A of the Rules (for online sale of tickets within 30 days), failing which their licences shall stand suspended. Learned senior counsel submits that the end date fixed by the Government is 2nd July, therefore, he submits that even though the petitioners are agitating their legal rights they are running the risk of their licences being suspended. He also, therefore, prays for an interim order.

12. Sri N. Ashwani Kumar, learned counsel for the petitioners states that the petitioner in W.P.No.16951 of 2022 is the exhibitor's association for all the single screen and double screen theatres within the Municipal limits of Vijayawada city. Since all of them are

³W.P.No.4430 of 2011 and Batch (High Court of A.P.)

collectively affected by the actions of the Government, including Section 5A of the Act No.12 of 2021 and the Rules framed thereunder, a writ is filed. The grievance of the writ petitioner is that even they are being compelled to sell their tickets through the 2nd respondent herein, who is the 3rd respondent in the 1st Writ Petition, and that there is absolutely no justification for compelling the regular single screen and double screen exhibitors also to use the only portal created by the 2nd respondent in this Writ Petition and their agency. According to him it is a clear breach of the petitioners' fundamental right under Article 19(1) (g) of the Constitution of India. He also prays for an interim order.

13. In reply to this, the learned Advocate General argues the matter at length. According to him, Rule 17A of the Rules is not a single integrated whole, but it should be understood as providing sub rules for controlling the black marketing, evasion of taxes and other issues, which are highlighted in the Act No.12 of 2021. Learned Advocate General submits that this is not unilaterally pressed upon the petitioners and that this is a part of exercise that is ongoing. He points out that over a period of time the State Government, by inviting all the stakeholders, attempting to streamline the whole procedure of sale of cinema tickets. Learned Advocate General submits that if the State completely prohibits the petitioners from carrying on their business, they may have grievance, but in the case on hand, he submits that the petitioners are permitted to continue their line of business and the State is only providing integration so that the ultimate consumer i.e., the cine-goer is not subjected to arbitrary/high ticket rates etc. Learned Advocate General submits that the interim order relied upon

by the learned senior counsel in W.P.No.7094 of 2022 is being challenged. He points out that the scope of challenge in that Writ Petition and the present writ petitions are different and therefore the said order cannot be relied upon. Learned Advocate General also relies upon the movie tickets purchased and which are filed to show that for the very same movie different rates are being charged by the petitioners like in the 1st Writ Petition. He submits that in order to curb these sort of practices, the amendments are brought into effect.

14. Learned Advocate General submits that the legislation or the Rules have not been brought in to circumvent order passed in I.A.No.1 of 2022 in W.P.No.7094 of 2022. He also argues that the Cinema Act regulates the entire issue relating to exhibition of films and, therefore, the Government has the power to enter this area. It is also argued that there is no prohibition under the Act to create a Nodal Agency or to allow the Nodal Agency to enter the business of online ticketing. He points out that the Government-owned Corporation-Respondent No.3, is the “competitor”, whereas the Government is a regulator. Relying on a Division Bench judgement reported in ***DKV Prasad Rao v Government of Andhra Pradesh***⁴ learned Advocate General submits that the power of the State to fix the rates has been upheld by the Division Bench and that therefore the fixation of rates of admission is an integral part of the regularisation and exhibition of cinemas. It is also argued that the fixation of rates of admission does not amount to restraining the Fundamental Rights of the petitioners. Learned

⁴ AIR 1984 Andhra Case 75

Advocate General also relies upon the order passed by the Competition Commission against the present petition in Case No.46 of 2021, wherein he submits that the Competition Commission came to a *prima facie* conclusion that there is a need to investigate the conduct of the petitioners in the 1st Writ Petition in order to determine whether they have contravened the provisions of Section 4 of the Act. Learned Advocate General also submits that the competitor is not an aggrieved person which enables him to seek a writ or remedy from a Court. He relies upon ***Nagar Rice & Flour Mills and others v N. Teekappa Gowda & Brothers and Others***⁵ and the case of ***JasbhaiMotibhai Desai v Roshan Kumar, Haji Bashir Ahmed and Others***⁶. Relying on these cases, learned Advocate General argues that the writ petitioners cannot complain to the Court that the setting up of another online booking system will affect the petitioners or that a futuristic loss of profit gives rise to a cause of action. Learned Advocate General, therefore, submits that the entire exercise is in public interest only. He finally submits that there is no need for an interim order and if the petitioners are ready the State is willing to argue the entire matter on merits.

15. In rejoinder, Sri Abhishek Manu Singhvi, learned senior counsel again reiterates that the entire scheme is a single integrated scheme and the petitioners are being forced to integrate with the 3rd and 5th respondents. It is also submitted that this is being done through

⁵(1970) 1 SCC 575

⁶(1976) 1 SCC 671

an executive order and not even by legislation. Therefore, learned senior counsel urges that this is a fit case for granting of an interim order.

16. This Court has heard the submissions at length. All the learned counsel had argued the matter at length. However, for the present this Court is only concerned with the issue of an interim order.

17. It is settled law that for the purpose of granting an interim order, petitioners should make out a *prima facie* case and that there should be a triable issue which requires further adjudication. As per the settled law on the subject it is clear that the purpose of granting interim order is to preserve the *status quo* that is existing so that the entire matter can be heard and finally disposed of. To a similar effect is the judgement cited by the petitioner in ***Duro Transport Co., Private Ltd., Durg, v The Regional Transport Authority, Raipur***⁷.

This position of law is not in doubt.

18. The existence of a *prima facie* case or a triable issue is a *sine qua non* for grant of an interim order along with balance of convenience and irreparable loss and injury. The issues raised by the petitioners in this case, in the opinion of the Court, need to be gone into detail and heard at length. Some of the issues that weighed with this Court at this stage are briefly listed hereinafter – Whether the Rule 17A of the Rules which compels the petitioners to sell their tickets only through the 3rd / 5th respondent amounts to a restriction or a

⁷ ILR Madhya Pradesh Series page 1

reasonable restriction on their right to carry on the trade and occupation. Whether the State under the existing law viz., A.P. Cinema Regulation Act, 1955 has the power to regulate these incidental services which are being provided to the cine-goer by third party aggregators and others needs to be looked into. Whether the rate of admission includes the service charges or not, is an issue that needs to be determined. Equally important is the other issue raised about a level playing field between the petitioners and the 3rd respondent / the 5th respondent. As pointed out by the learned Senior Counsel for the petitioners, the ticket charges are regulated and fixed but the service charges vary. The petitioners are charging their own service charges for providing services to the consumer / cine-goer. An additional service charge upto 2% has to be paid on the ticket/ rate of admission to the 3rd and 5th respondents. Therefore, *prima facie* it appears that the cost to the consumer when the ticket is sold will include the rate of admission (ticket cost), petitioners' services charge / convenience charge and the 2% brought in by Rule 17A. On the other hand, the 5th respondent, who is also permitted to sell tickets online, will only be selling tickets at the fixed price and a service charge upto 2%. This issue has to be further examined, particularly in light of the judgement in ***Mohammad Yasin case***, (2 supra) wherein the Hon'ble Supreme Court of India held that levy of the fee will operate as an illegal restraint and would infringe on the right of the dealer granted under Article 19 (1) (g). Whether the petitioners can be asked to use only the gateway provided by the 3rd respondent and sell tickets along with a competitor i.e., the 5th respondent, who is appointed/selected

by the 3rd respondent? Whether this sort of an arrangement can be made or insisted upon by mere executive instructions or Rules? Whether the amendment as revealed by the statement of objects and reasons and the provisions of the Act or the Rules does not have a match or a reasonable nexus to the purpose? Whether the amendment is made to get over the judicial orders passed? Lastly, the alleged infringements of Articles 14 and 19 of the Constitution of India have also to be examined threadbare along with the issue of proportionality. Therefore, this Court is of the opinion that the petitioners have made out more than a *prima facie* case.

19. Coming to the issue of balance of convenience, this Court is of the opinion as of now that greater harm will be caused to the petitioners if the interim order is not granted at this stage. The petitioners will have the risk of their agreements with third parties running into deeper difficulties. The petitioners in W.P.No.1249 of 2022 run the risk of their licences being cancelled if they do not migrate into the system by the cut-off date. The same is the case of the petitioners in Writ Petition No.16951 of 2022. On the other hand, by postponing these issues till the final adjudication takes place no loss will be caused to the Government or to the cinema going public, who will continue to buy tickets as before. After weighing the competing submissions, this Court opines for now that the comparative mischief is higher for the petitioners. The loss in this case is also irreparable and as mentioned in the previous paragraphs, ongoing contracts will be disturbed, licences are likely to be cancelled etc.

20. For all these reasons, this Court is of the opinion that the existing state of things must be preserved as it is. Hence, there shall be an interim order as prayed for and the respondents are restrained from giving effect to and operating the online ticketing solution for ticketing for the cinema theatres and cine-goers in Andhra Pradesh under online system as enacted under the impugned Act, Rules or under the impugned provisions.

21. The opinions expressed in this order are for determining the issue of grant of an interim order only and are *prima facie* opinions.

22. With the consent of all the learned counsel, list the writ petitions for final hearing on 27.07.2022.

PRASHANT KUMAR MISHRA, CJ

D.V.S.S. SOMAYAJULU, J

SSV

HIGH COURT OF ANDHRA PRADESH: AMARAVATI
HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA, CHIEF JUSTICE
&
HON'BLE MR. JUSTICE D.V.S.S. SOMAYAJULU

I.A.No.1 of 2022 in WRIT PETITION No.16346 OF 2022

And

I.A.No.6 of 2022 in WRIT PETITIONNo.1249 of 2022

And

I.A.No.2 of 2022 in WRIT PETITION No.16915 of 2022

Date:01.07.2022

Ssv