



ABSTRACT

Cinemas – Writ Petition No.37971/2015 – Filed by the Tamil Nadu Film Exhibitors' Association, Chennai – Orders of the Hon'ble High Court of Madras – Fresh consideration of the Demands of the Tamil Nadu Film Exhibitors' Association, Chennai – Rejected - Orders – Issued.

Home(Cinema)Department

G.O.(D) No.7

Dated: 03.01.2017

Read:

1. Representation received from Thiru. R. Panneerselvam, General Secretary, Tamil Nadu Film Exhibitors' Association, Teynampet, Chennai, dated 19.12.2013.
2. Orders of the Hon'ble High Court of Madras in Writ Petition No.5268/2015 in dated 27.02.2015.

Read also:

3. Government Order (D)No.1016, Home (Cinema) Department, dated 21.10.2016.
4. Orders of the Hon'ble High Court of Madras in Writ Petition No.37971/2015 in dated 24.10.2016.

ORDER:

The General Secretary, Tamil Nadu Film Exhibitors' Association, Chennai has filed a Writ Petition No.5268/2015 before the Hon'ble High Court of Madras requesting to direct the respondent to dispose of their representation dated 19.12.2013 submitted to the Government with regard to their following four demands:-

I. To revise the rates of admission as mentioned below:-

<u>A.C. Theatres</u>			<u>Non A.C. Theatres</u>	
Chennai City	Maximum Rs.	Minimum Rs.	Maximum Rs.	Minimum Rs.
	150/-	35/-	100/-	25/-
Other Cities	100/-	25/-	80/-	20/-

- II. To restore the orders issued in G.O. (Ms) No.618, Home (Cinema) Department, dated 17.7.2002 (which was later cancelled) granting the powers to the licensees to fix the rates of admission to the new films for the first two weeks.
- III. To revise of maintenance charges as Rs.5/- for A.C. theatres and Rs.3/- for non A.C. theatres without taxes.
- IV. The "C" form licence in respect of cinema theatres which are more than 20 years may be renewed once in five year instead of every year.

2. The Hon'ble High Court of Madras in its order second read above dated 27.2.2015 has directed as follows:-

"to consider the case of the petitioner, on the basis of the representation given by the petitioner on 19.12.2013 and to pass orders on merits and in accordance with law, within a period of two months from the date of receipt of a copy of the order"

3. In its Government Order 3rd read above, the Government have rejected all the 4 demands of the Tamil Nadu Film Exhibitors' Association, Chennai.

4. The General Secretary, Tamil Nadu Film Exhibitors' Association, Chennai has filed a W.P. No.37971/2015 before the Hon'ble High Court of Madras. The Hon'ble High Court of Madras in its judgement 4th read above has directed as follows:-

"We are, thus not satisfied with the disposal of the representation and thus direct that fresh consideration should take place based on the parameters set out by the petitioner in paragraphs (7) and (8) of the Writ Petition (No.37971/2015) and then the decision should be taken within a maximum period of one month from today and communicate it to the petitioner".

"We expect a rationale and realistic consideration keeping in mind the parameters set out in paragraphs (7) and (8). Needless to say that if the petitioner is still aggrieved on any aspects, it will be open to the petitioner to assail the fresh consideration, while we set aside the order dated 21.10.2016"

5. In compliance to the above orders of the Hon'ble High Court of Madras, the Government have examined the demand No.1 afresh in the light of the contentions made in paras 7 and 8 of the Writ Petition, which are reproduced below:-

- (7) The petitioner submits that the entertainment tax in 2009 was 15% and now in 2014 it has become 30%. Further, the dearness allowance payable to the

workers under the minimum wages act was Rs.549 for the year 2006-2007. Then, for 2007-2008, it was increased to Rs.647 and for the year 2008-2009 it was further increased to Rs.854. For the year 2009-2010 the dearness allowance was increased to Rs.1190 and for 2010-2011, it was increased to Rs.1848. For the year 2011-2012, it was Rs.2254 and for the year 2012-2013 it was Rs.2611. For the year 2013-2014, it was increased Rs.3465 and now for the year 2014-2015, the dearness allowance as fixed by the Government is Rs.4235. Thus it seen that merely the payment of dearness allowance to works for employment in cinemas has seen a 771% exponential increase from the year 2006-2007 till 2014-2015. However, the prices of the tickets alone has remained the same.

- (8) I further state that rates of electricity has also increased. In September 2009, the cost of electricity was Rs.3.50 per unit apart from demand charges, meter rent and energy charges apart from the others. In September 2014, the price has now become Rs.7 per unit. The business dynamics of the cinema industry has also undergone a sea change. The concept of middle level distributors who sell the films to the film exhibitors has become passe. Today, the producer himself is the distributor and depending on the commercial viability of the cinema, a profit sharing, percentage is worked out between the film exhibitor and the distributor. A small example would show the plight at which single theatre owners are suffering because of the fixed cap of admission rates. As per the present Government rates, the admission rates for a A/C theatre in a municipality is Rs.50.15 rupees goes straight away towards entertainment tax Rs.10 would have be deducted for the electricity charges and Rs.4 would have to be deducted towards payment of dearness allowance and wages to workers, Property tax and general wear and tear is Rs.2. Therefore it is seen that out of Rs.50, the take home for the film exhibitor after payment of all necessary statutory dues is only Rs.19 as almost 31 rupees per ticket is spent towards statutory dues. This 19 rupees would have to be leveraged and shared between the distributor usually at a 60.40 ratio towards the distributor. This example is clear enough to show that at the present admission rates, it is next to impossible for single theatre owners to survive.

6. As per Rule 83(1A) (c) (i) of the Tamil Nadu Cinemas (Regulation) Rules, 1957, the licensee may revise the rates of

admission to theatres located in the areas within the minimum and maximum rates stipulated in the rule. As per this rule the maximum and minimum rates in respect of A.Cs and non A.C. theatres in Municipal Corporation are as follows:-

Rates of Admission

	<u>A/c Theatre</u>	<u>Non A/c Theatre</u>
<u>Municipal Corporations</u>		
Minimum	Rs.10/-	Rs.7/-
Maximum	Rs.50/-	Rs.30/-

7. The main contentions of the Tamil Nadu Film Exhibitors' Association for increasing the rates of admission about 150% to 200% are given below:-

- I. The Entertainment Tax in 2009 was 15% and now it has become 30%.
- II. The Dearness allowance to the workers in 2006-2007 was Rs.549/- and in the year 2014-2015 was Rs.4,235/-. There is an exponential increase in the Dearness Allowance by 771%
- III. The Electricity charges in September 2009 was Rs.3.50 per unit apart from demand charges meter rent and energy charges. Electricity charges is Rs.7/- per unit in September 2014.

The rates of admission in a municipality is Rs.50/-. The break up details of the cost and profit as on date are given below:- (as per the petitioner)

<u>Rates of Admission</u>		: Rs.50/-
i. Entertainment Tax (30%)	:	Rs.15
ii. Electrical Charges	:	10
iii. Depreciation (Property Tax)	:	2
iv. Labour Expenses (D.A.)	:	4
Total cost	:	31
		31/-
Profit - (50-31) =		19/- (per ticket)

The petitioner claims that at present the expenditure (cost) incurred per ticket is Rs.31/- i.e., 62% of the ticket price and 38% per ticket is the take home profit by the single theatre owner.

8. Regarding the contention of the petitioner on the increase in the entertainment tax from 15% to 30% in 2009 it is observed that prior

to 14.09.2011 it was 15% of the rate of admission per ticket for new films and 10% of rate of admission per ticket for old films. Now, it is 30% of the rate of admission for new films and 20% of the rate of admission for old films. The entertainment tax was revised with effect from 14.09.2011 as detailed below:-

The entertainment tax shall be levied on each payment for admission to any cinematograph exhibition in the permanent or semi permanent theatre in Municipal Corporation, Municipalities special grade.

- (I) (a) at the rate of 30% of the gross payment for admission inclusive of the amount of the tax for new film and
- (b) at the rate of 20% of the gross payment for admission inclusive of the amount of the tax for old film.
- (II) In respect of areas other than specified above at the rate of 20% of the gross payment for admission inclusive of the amount of the tax for new or old film.

9. In regard to the claim of the petitioner Association on the exponential increase in the dearness allowance paid to the workers under the minimum wages Act by 771% during the period from 2007 to 2014 it is pointed out that the minimum rate of basic wages along with the Dearness Allowance for the scheduled employment under the minimum wages Act 1948 are revised once in every 4 years by the Government. The minimum rates of basic wages to be paid to the employees in the cinema industry under the minimum wages act in 2007 was about Rs.3,000/- per month and the Dearness Allowance was Rs.652.70/- per month (Total Rs.3,652.70). In 2014 the basic wage was about Rs.4,000/- per month and the Dearness Allowance was Rs.5,370/- (Total Rs.9,370/-) per month. As on today minimum rate of basic wages is about Rs.4,000/-per month per worker and the Dearness Allowance is Rs.6,099/- (total 10,099) per month per worker. The minimum wages of a worker per month has increased by 176% during the period from 2007 to 2016. The wages are paid to the workers only monthly and the number of workers will be 10 to 12. In respect of a Theatre with a seating capacity of 1000 the expenditure incurred for wages per ticket in the year 2007 was 30 paise (0.6%) and in the year 2016 it is 84 paise (1.68%). As such impact of increase in the minimum wages (basic wages + Dearness allowance) is very marginal per ticket.

10. Regarding the contention of the petitioner on the increase in the property tax it is noted that it is levied only 6 months once/ once in a year and its impact per ticket is very minuscule. i.e., 2 paise to 7 paise per ticket (0.04%). Regarding contention of the petitioner on the increase in the electricity charges, it is pointed out that in 2009 demand charge was Rs.60/ per service / per month. Now the demand/fixed charges vary based on the location. It is Rs.140 /KVA/ per 2 months. In 2009 the Energy charge was Rs.5.04 per unit. Now it is fixed on slab system. Upto 100 units it is Rs.5 per

unit and above 100 units it is Rs.8.05 per unit. The electricity charges in respect of Cinema theatre in 2009 was Rs.5.80 per unit and in 2015 it was Rs.8.96 per unit and as on today it is Rs.8.96 per unit (including demand charges and rent). Though there is 54% increase in the electricity tariff during the period from 2009 the impact of this increase in the tariff per ticket is very minimal.

11. From the above it is obvious that the impact of marginal increase in the wages, Electricity tariff and property tax on the cost per ticket is very insignificant in view of the "spread over effect" on the cost of the total tickets. But, the petitioner has claimed that the total expenditure in paying statutory dues is Rs.31/- per ticket. Hence, data have been obtained in respect of a few A.C. theatres in municipal limits with seating capacity of 500 and 1000. The table below shows approximate expenditure being incurred by a theatre owner per ticket:-

Cost / Expenses per ticket (Approximately)

	A.C. theatre with 500 seating capacity		A.C. theatre with 1000 seating capacity	
	100% (House full)	70%	100% (House full)	70%
E.T.	Rs.15.00/-	Rs.15.00/-	Rs.15.00/-	Rs.15.00/-
E.B.	1.06	1.52	0.67	0.96
Labour	2.30	3.30	1.14	1.40
Property Tax (Actual Property tax 2 paise)	0.30	0.30	0.30	0.30
Total	18.66	20.12	17.11	17.66

Rates of Admission : **Rs.50/-**

Cost per ticket : **Rs.18/-**

Profit : **Rs.32/-**

12. The above table shows that Entrainment Tax has increased by 15% or 10%, (in 2011 Rs.7.50 for new films and Rs.5 per ticket for old films and now Rs.15 per ticket for new films and Rs.10 per ticket for old films) Electricity charge has increased by 1%, Labour wages increased by 2% and Property Tax and depreciation by 0.6%. There is an approximate increase of 18.6% per ticket in the cost. The take home profit by the single theatre owner is Rs.32/-(50-18) per ticket. The take home profit per ticket (in the case of Rs.50/-) by a single theatre owner is 64% of the rates of admission. Hence, the claim of the petitioner that there is an exponential increase in the expenditure involved is not correct. As there is a marginal increase in the cost incurred per ticket, there is very marginal erosion in the profit. The above cost per ticket has been calculated by liberally providing for the expenses compared to

the actual cost being incurred (as furnished in paras 8-11 above). In view of the above, it is considered that there is no imminent need to increase the rates of admission at present. Hence, the demand for increasing the rates of admission by 150% to 200% deserves to be rejected.

13. It is further pointed out that besides the income from the sale of tickets the theatre owners are getting significant income from the shops inside the premises since all the theatres are having food courts, canteen and snack shops within the theatre premises to provide water, snacks, tiffen etc., to the cinema going public. As the cine going public are not allowed to bring water and other eatables inside they are forced to buy these things from these shops at higher rates. There are complaints about the theatre owners charging the items being sold from these shops at twice/thrice the market price. As such the claims of theatre owners that they are incurring losses are not true.

14. Regarding the demand No.2 it is observed that orders empowering the Licencees to fix the rates of admission to the new films for the first 2 weeks were cancelled on receipt of representation from the film producers council on various issues. They submitted the representation after discussing them with Cinema Producers Association, Distributors Association and Theatre Owners Association. Further, the powers of the Government cannot be delegated to the private individuals, which may result in exploitation of the cinema going public. No valid reason has been put-forth by the petitioner.

15. With reference to the demand No.3 it is observed that as per rule 80 (7) of the Tamil Nadu Cinemas (Regulation) Rules, 1957 the licensee is permitted to collect the maintenance charges of fifty paise per ticket, in respect of non-air conditioned theatre and one rupee in respect of air conditioned theatre. The licensee shall maintain a separate register for this purpose and shall properly account for the collection of maintenance charges and the actual amount spent on maintenance. The petitioners' Association has put-forth this demand without any statistical data justifying its demand.

16. With reference to the demand No.4 it is observed that as per section 5 (2) (b) of the Tamil Nadu Cinemas (Regulation) Act, 1955, the licensing authority shall not grant a licence unless it is satisfied that adequate precautions have been taken in the place, in respect of which the licence is to be granted, to provide for the safety, convenience and comfort of the persons attending exhibitions, therein and as per rule 42 (1) in Part II (c) of the Tamil Nadu Cinemas (Regulation) Rules, 1957 read with 40(4) the period of validity of the licence shall be decided and granted only on the basis of the Structural Soundness Certificate of the building. As such the most important factor to be kept in mind while renewing

"C" form licence, for the theatre which are more than 20 years, is to ensure the safety of the cinema going public. Hence, increasing the renewal period to that of five years in respect of more than 20 years old theatres will not be in the interest of the cinema going public.

17. In view of the above reasons, it is considered that all the 4 demands of the petitioner Association will directly affect the interest of the cinema going public. The petitioner Association has not put-forth valid reasons in support of their demands. The Government, therefore reject all the 4 demands of the Tamil Nadu Film Exhibitors' Association, Chennai made in their representation mentioned in para 1 above.

(BY ORDER OF THE GOVERNOR)

**APURVA VARMA
PRINCIPAL SECRETARY TO GOVERNMENT**

To

The General Secretary,
Tamil Nadu Film Exhibitors' Association,
D.R. Maligai No.2 (Old No.16) Poes Road,
III Street, Teynampet, Chennai-18.

The Principal Secretary and
Commissioner of Land Administration,
Chepauk, Chennai - 5.

Thiru. M.K. Subramanian, Government Pleader,
High Court of Madras, Chennai -104.

The Commissioner of Police, Chennai-7.

Copy to :

✓ The Special Personal Assistant to Hon'ble Minister
for Information and Publicity, Chennai-9.

✓ The Private Secretary to Principal Secretary,
Home, P&E Department, Chennai-9.
SC/Sf.

// FORWARDED BY ORDER //

P. S. S. S. S.
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SECTION OFFICER

[Signature]
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