



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.497 OF 2014

PVR Limited, having its registered
office at 61, Basant Lok,
Vasant Vihar, New Delhi – 110 057 ...Petitioner

Versus

1. The State of Maharashtra
Revenue and Forests Department
office at Global Business Centre,
Central 1, 32nd Floor, Cuffe Parade
Colaba, Mumbai – 400 995.
2. The Revenue Commissioner
Old Secretariat Building, First Floor,
Fort, Mumbai – 400 001.
3. The Collector
Mumbai Suburban District
office at Administrative Building,
9th Floor Government Colony,
Bandra (East), Mumbai – 400 051
4. The Collector Mumbai City
office at Old Customs House,
Fort, Mumbai – 400 001. ...Respondents

WITH
WRIT PETITION NO.2221 OF 2014

1. FICCI-Multiplex Association of India
A society incorporated under Societies
Registration Act, 1860 and having its
registered office at Federation House,
Tansen Marg, New Delhi – 110 001
2. Dnyandas Damodar Chaphalkar,
Secretary of the Petitioner No.1, adult,
Indian citizen, having office at Chaphalkar

Brothers, Mangala Multiplex,
111-Shivajinagar Pune – 411 005

...Petitioners

Versus

1. State of Maharashtra
Revenue & Forests Department
Mantralaya, Mumbai – 400 032
(through the Government Pleader,
High Court, Original Side)
2. The Revenue Commissioner
Having address at Old Secretariat
Building, First Floor, Fort,
Mumbai – 400 051.
3. The Collector, Mumbai Suburban
District having address at
Administrative Building, 9th Floor,
Government Colony, Bandra (East),
Mumbai – 400 051
4. The Collector – Mumbai City
Having address at Old Custom House,
Shahid Bhagat Singh Road, Fort,
Mumbai – 400 001.

...Respondents

**WITH
WRIT PETITION NO.1755 OF 2013**

1. Big Tree Entertainment Private Limited
Wajeda House, Behind Gazebo House,
Gulmohar Cross Road, No.7,
Juhu Scheme, Mumbai – 400 049.
2. Rajesh Balpande
Director of Petitioner No.1
Having office at Wajeda House,
Behind Gazebo House,
Gulmohar Cross Road, No.7,
Juhu Scheme, Mumbai – 400 049.

...Petitioners

Versus

1. State of Maharashtra
Revenue & Forests Department
Mantralaya, Mumbai – 400 032
(through the Government Pleader,
Original Side)
2. The Revenue Commissioner
Old Secretariat Building, First Floor,
Fort, Mumbai – 400 051.
3. The Collector, Mumbai Suburban
District 9th Floor, Administrative
Building, Government Colony,
Bandra (East), Mumbai – 400 051. ...Respondents

**Mr. Naresh Thacker a/w Ms. Shweta Rajan i/b. Economic Law
Practice for the Petitioner in WP/497/2014.**

**Mr. Naresh Thacker a/w Mr. Chakrapani Misra, Mr. Sameer Bindra
& Ms. Ananya Misra i/b. Khaitan & Co. for the Petitioners in
WP/2221/2014.**

**Mr. Rohan Rajadhyaksha a/w Mr. Dhirajkumar Totala & Mr. Tejas
Raghav i/b. AZB & Partners for the Petitioners in WP/1755/2013.**

Mr. Milind More, Addl. G.P. for Respondent-State of Maharashtra.

**CORAM : M. S. Sonak &
Jitendra Jain, JJ.**

RESERVED ON : 7 July 2025

PRONOUNCED ON : 10 July 2025

JUDGMENT:- *(Per Jitendra Jain, J.)*

1. By consent of the learned counsel for the parties, Writ Petition No.497 of 2014, is taken as the lead petition. The learned counsel also agree that a common judgment could dispose of these petitions, since the legal issue involved in all three writ petitions is the same.

2. Rule and Interim relief was granted on 9 July 2014, staying the operation and implementation of paragraph 3(d) of the Government Order (G.O.) dated 4 April 2013 and clause (a) of the Government Order (G.O.) dated 18 March 2014 issued by the Revenue and Forest Department, Government of Maharashtra, which prohibited the collection of service charges/convenience fees on booking of computerized cinema tickets online.

Brief Facts:-

3. The Petitioner is engaged in the business of operating and managing multiplex cinemas in India, including in the State of Maharashtra.

4. On 4 April 2013, the impugned G.O. was issued, ordering that no exhibitor, owner, or agent should charge or recover any additional amount from viewers for online computerised ticket sales. The said clause (d) of the G.O. reads as under:-

(d) At the time of selling the tickets in the Cinema theatres through online computerized system, the Operator, Owner and also the Agent shall not charge any additional service charge. For this purpose, the Operator/Owner of the theatres shall not recover the amount due and payable to the appointed agency.

5. On 18 March 2014, another G.O. was issued, which is also impugned in the present petition. It is stated that all the theatre conductors in the State should set up their own service/machinery for online ticket sale within a period of four weeks from the date of the order passed by the High Court in Public Interest Litigation (PIL) No.66/2013. However, it was stated that, when making tickets available through this machinery, no additional service

charges should be recovered from the viewers. The said clause (a) of the Government Order issued on 18 March 2014 reads as under:-

“(a) All Cinema theatre Operators across the State shall set up their own service/system for online sale of tickets, within a period of 4 weeks, i.e. upto the date 1st April 2014 from the date of passing of the Order i.e. from the date 4th March 2014, by the Hon’ble High Court and while making the tickets available through this system, no additional service charges shall be recovered from the viewers.”

6. It is the above two clauses, namely clause 3(d) of the G.O. dated 4 April 2013 and clause (a) of G.O. dated 18 March 2014, which are challenged in this petition.

7. On 29 December 2014, Section 2(b) of the Maharashtra Entertainment Duty Act, 1923 (earlier known as Bombay Entertainment Duty Act) which defines “payment for admission” was amended and a proviso was inserted which provided that service charges for providing facility of online ticket booking shall be included in the “payment for admission”.

8. In the present petition, we are called upon to decide the validity of the above two clauses of the G.O.s dated 4 April 2013 and 18 March 2014.

Submissions of the Petitioner:-

9. Mr. Thacker, learned counsel for the Petitioner, submits that Respondents, by the impugned G.O. seek to restrain the Petitioner from charging convenience fees on tickets booked online. According to the learned counsel for the Petitioner, this would be

violative of Article 19(1)(g) of the Constitution of India, since the Respondents seek to regulate the consideration in the contract between the private parties and impose unreasonable restrictions on the right to carry on a legitimate business, which is unconstitutional. He submitted that without a law, no restrictions can be imposed on legitimate business. He further submits that there is no power conferred upon the Respondents under the Maharashtra Entertainment Duty Act, 1923 (ED) to issue such G.O.s. He submits that even the impugned G.O.s do not specify the source of power for issuing such orders, nor can any such source of power be traced in the reply filed by the Respondents. He further submits that such an order could not have been issued even under Article 162 of the Constitution of India.

10. The learned counsel, in his written submissions, invoked Article 14 of the Constitution of India on the ground that it would lead to disparity between the State of Maharashtra and other States, and consequently impugned the G.O.s as violative of Article 19(1)(g). He also states in these submissions that convenience fees cannot be treated as 'payment for admission'. We may observe that on both these issues, no submissions were made in the course of the arguments, but the same has been taken in the written submissions, and therefore, the same are not considered by us. Upon this being pointed out to the learned counsel for the Petitioner, he readily accepted that such arguments should not have been included in the written submissions.

11. The learned counsel for the Petitioner relies upon the following decisions in support of his above submissions :-

- (i) *Indian School, Jodhpur and Anr. Vs. State of Rajasthan*¹
- (ii) *State of Bihar & Ors. Vs. Project Uchha Vidya, Sikshak Sangh & Ors.*²

12. Mr. Thacker has not made any other submissions.

13. Mr. Rohan Rajadhyaksha, learned counsel for the Petitioners in Writ Petition No.1755 of 2013, adopted Mr. Thacker's submission and also made additional submissions. He pointed out that in the petitions he appears in apart from the Petitioner companies, even the shareholder-directors are the Petitioners. He squarely invoked the challenge based on Article 19(1)(g) by submitting that the restriction imposed was unreasonable and without the authority of the law.

Submissions of the Respondents:-

14. Mr. More, learned Additional Government Pleader for the Respondents supported the impugned G.O.s by relying upon Article 162 of the Constitution of India. In addition, he also relied upon the reply filed to the petition in support of his submissions and justified the issuance of the impugned G.O.s to the extent challenged in this petition. He emphasised on the provisions of Section 3(3)(e) of the ED Act to justify the impugned G.O.s which prohibits collections specified therein. The learned counsel for the Respondents also strongly relied upon the provisions of Section 4(2)(b) of the ED Act and submitted that the source of power to issue prohibition from collecting convenience fee can be found in the said section.

1 (2021) 10 SCC 517

2 (2006) 2 SCC 545

15. We have heard the learned counsel for the Petitioner and the learned counsel for the Respondents.

Background:-

16. The background of the issue raised for our consideration needs to be noted. On 21 September 2000, the Respondents issued a G.O. specifying a new administrative procedure because of the computerised sale of tickets. The procedure dealt with various aspects of printing cinema tickets, including what must be specified on the tickets, maintaining ticket sales details, and other related matters.

17. On 4 April 2013, the Respondents issued another G.O., after referring to the above G.O. dated 21 September 2000, and prescribed a revised procedure for the printing of cinema tickets, the levy of an additional service charge, etc. In paragraph 2 of the G.O. dated 4 April 2013, it is specified that the entertainment duty would be chargeable on the charges of the spectacles, which shall be included in these tickets for the levy of the entertainment duty. In clause 3(d) of this G.O., it was mentioned that at the time of selling the tickets in the cinema theatres through online computerised system, the Operator, Owner and also the Agent shall not charge any additional service charge and for this purpose, the Operator/Owner of the theatres shall not recover the amount due and payable to the appointed agency. In this petition, the Petitioner challenges paragraph 3(d) of the G.O as mentioned above.

18. On 18 March 2014, the Respondents, after referring to the above G.O. dated 4 April 2013, issued necessary guidelines to the Operators of all cinema theatres to make an online sale system/mechanism available for the sale of tickets. Clause (a) of the G.O. dated 18 March 2014 stated that all cinema theatre operators shall set up their own service or system for online ticket sales, and while making tickets available through this system, no additional service charges shall be recovered from viewers. The G.O. dated 18 March 2014 refers to an order dated 4 March 2014 passed by the Co-ordinate Bench of this Court in PIL No.66 of 2013. The Petitioners have also challenged clause (a) of the G.O. dated 18 March 2014, which is part of the present petition, whereby the Respondents have directed theatre owners and others not to recover additional service charges from viewers when making tickets available through an online system.

19. We clarify that only clauses 3(d) of the G.O. dated 4 April 2013 and clause (a) of the G.O. dated 18 March 2014 are being challenged before us. The subject matter of the present petition, therefore, does not deal with the whole of the G.O.s dated 4 April 2013 and 18 March 2014.

Analysis & Conclusions:-

20. The Maharashtra Entertainment Duty Act, 1923 is enacted for the levy of duty in respect of admission to entertainment in the State of Maharashtra.

21. Section 2 defines various terms and Section 2(b) defines “payment of admission” in relation to the levy of entertainment

duty to include items specified therein. Section 3 is a charging section which provides that duty shall be levied and paid to the State Government, on payment for admission fixed by the proprietor to any entertainment or exhibition by means of (DTH) broadcasting service, etc., duty at the rate specified therein, the rates being based on the area and the activity of entertainment.

22. Section 4 deals with the method of levy. It provides that no person, other than a person who is to perform some duty in connection with entertainment or duty imposed upon him by any law, shall be admitted to any entertainment except with valid printed tickets or complimentary tickets. Section 4B deals with the assessment of entertainment duty. Section 4C to 4E deals with the assessment, remission and refund of entertainment duty. Section 5 deals with punishment for non-compliance with the provisions of the Act.

23. Section 6 deals with exemption from entertainment duty for charitable or educational purposes. Section 7 empowers the State Government to make rules for securing the payment of the entertainment duty and for carrying into effect the provisions of the Act. Section 8 deals with the powers of the authorities under the Act to inspect places of entertainment.

24. Section 9 deals with recovery of entertainment duty as an arrear of land revenue. Section 10 provides for delegation of power by the State Government by general or special order. Section 10-A deals with appeals and revision. Section 13 deals with prohibition of levy of entertainment duty by local authorities.

25. The short issue which is posed for consideration of the Court is whether the impugned G.O.s insofar as it prohibits the theatre owners and others to collect convenience fees on online ticket booking is constitutionally valid.

26. We now propose to examine whether, under the ED Act, there is a power given to the authority issuing the impugned G.O.s to prohibit the collection of convenience fees on online booking. We have already examined various sections of the ED Act above. The only relevant Section which would require consideration insofar as to ascertain the source of power to issue such G.O.'s would be Section 7 and Section 10.

27. Section 7 empowers the State Government to make Rules for ***securing the payment of the entertainment duty*** and for ***carrying into effect the provisions of the ED Act***. Section 7 to the extent relevant reads as under:-

“7. Power to make rules.— (1) The State Government may make rules for securing the payment of the entertainments duty and generally for carrying into effect the provisions of this Act, and in particular—

(b) for the use of tickets covering the admission of more than one person and the calculation of the duty thereon; and for the payment of the duty on the transfer from one part of a place of entertainment to another and on payments for seats or other accommodation ;

(c) for controlling the use of mechanical contrivances (including the prevention of the use of the same mechanical contrivance for payments of a different amount), and for securing proper records of admission by means of mechanical contrivances;

(ca) for prescribing the amount and manner of furnishing a security deposit and also the form in which the information is to be

furnished to the Collector under clause (d) of sub-section (4) of section 3;

(d) for the checking of admission, the keeping of accounts and the furnishing of returns by the proprietors of entertainments in respect of which the duty due is payable in accordance with the provisions of section 4, sub-section (2); and for requiring such proprietors to furnish security for payment of duty under sub-section (2) of section 4 and prescribing conditions for forfeiture of such security;

(da) for manner of serving notice under sub-section (2) of section 4B, and for the procedure to be followed for best judgment assessment under that section;

(f) for prescribing the conditions and form for payment and remission of duty payable under sub-section (3) of section 3;

(g) for the presentation and disposal of applications for exemptions from payment of the entertainments duty or for the refund thereof; and

(h) for the exemption for entertainments duty or from part or class thereof soldiers, sailors and airmen belonging to the defence forces of any nationality when attending an entertainment either in uniform, or subject to production of identity card, in civilian dress;

(i) for the issue of passess by a proprietor of a place of entertainment for the admission to the place of entertainment of officers who have to perform any duty in connection with the entertainment or any other duty imposed upon them by law;

(j) collection of entertainment duty on cable television including Direct-to-Home (DTH) Broadcasting service by public auction;

(k) for prescribing the terms and conditions for exemption of duty under sub-section (13A) of section 3.

(2) If any person acts in contravention of, or fails to comply with, any such rules he shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

28. On an examination of Section 7(1) and the sub-clauses specified therein, we do not find any power conferred upon the Respondents to pass the impugned G.O.s prohibiting collections of convenience fees. The Rules are made for securing the payment of

the entertainment duty and for carrying into effect the provision of the said Act. The ED Act is enacted for levy and collection of the entertainment duty by the State. Therefore, prohibiting collection of convenience fee by the theatre owners and/or others from its customers on online booking does not fall within the purview and scope of the ED Act. By the impugned G.O.s, what is sought is to prohibit the collection of convenience fees without anything more. We have not been pointed out any provision of Section 7 which empowers imposing such a prohibition, nor it is stated so in the impugned G.O.s and affidavit-in-reply.

29. Section 10 which deals with delegation of powers by the State Government provides that powers and duties conferred or imposed upon the State may be exercised or performed by any person whom the State by general or special order empowers on its behalf. The said section only permits delegation of power and that too only for the purpose of powers and duties conferred upon the Act. We could not find any power in the Act, which permits the Respondents to issue G.O.s prohibiting collection of convenience fees on online ticket booking.

30. Therefore, in our view, on a reading of Sections 7 and 10 of the ED Act, there is no power conferred on the Respondents to issue G.O.s which prohibits collection of convenience fees by the theatre owners and/or others from the customers on the transaction of online booking of tickets.

31. The learned counsel for the Respondents has laid emphasis on Section 3(3)(e) of the ED Act to justify the power to impose restriction on collection of convenience fees. Therefore, it is

necessary to analyse Section 3 and more particularly Section 3(3)

(e). Section 3 to the extent relevant reads as under :-

“3. Duty on payments for admission to entertainment.— [(1) There shall be levied and paid to the State Government [on payment for admission fixed by the proprietor] to any entertainment [except in the case of video games, exhibition by means of any type of antenna or cable television, [or Internet Protocol Television,] or exhibition by means of Direct-to-Home (DTH) Broadcasting service, bowling alley, go-carting, dance bar, [permit room or beer bar with live orchestra, pub,] discotheque, amusement park, water sports activity, pool game] [or tourist bus with video facility] a duty (hereinafter referred to as “entertainments duty”) at the following rates, namely :—

*(a) where the payment * * * * is made for Admission to a racecourse licensed under 11the Bombay Racecourses Licensing Act, 1912 (Bom. II of 1912) [or under the Maharashtra Dog Racecourses Licensing Act, 1976 (Mah. XXXIII of 1976)] [100] per cent. of such payment, and*

1[(b) in the case of every entertainment, other than exhibition by cinematograph including video exhibition, video games, exhibition by means of any type of antenna, cable television, [Internet Protocol Television,] exhibition by means of Direct-to-Home (DTH) Broadcasting service, bowling alley, go-carting, dance bar, [permit room or beer bar with live orchestra, pub,] discotheque, amusement park, water sports activity, pool game or tourist bus with video facility, within the limits of,

TABLE

Serial No.	Area	[Rate of entertainment duty on payment for admission fixed by the proprietor
(1)	(2)	(3)
1	Brihan Mumbai Municipal Corporation.	25 per cent.
2	All Mumbai Corporations (other than Brihan Mumbai Municipal Corporations and Cantonments areas.	20 per cent.
3	“A” Class, “B” Class and “C” Class Municipal Councils.	15 per cent
4	Any other areas not covered by entries 1 to 3 above.	[10 per cent]

[Provided that, in the case of the cabaret or discotheque entertainment, fifty per cent. of the total payment charged by the proprietor per person per show, whether with or without eatables or beverages and whether

regular tickets are issued or not, for a admission to such entertainment, shall be deemed to be the payment for admission and duty shall be levied thereon accordingly under this clause :

Provided further that, the entertainment duty in respect of an amusement park shall be 15 per cent. of the payment made for admission to the amusement park, including payment made for admission for games and rides, whether charges separately or not:]

[Provided also that, the entertainment duty in respect of water sports activity, by whatever name called, whether situated within or outside the amusement park, shall be [15 per cent.]of the payment made for admission to the water sports activity including payment made for admission for water games and sports, whether charged separately or not:]

[Provided also that, the entertainment duty in respect of the Award Function organised only for invitees, without selling tickets, shall be 12.5 per cent. of the total sponsorship amount received for such function.]

(c) in the case of exhibition by cinematograph including video exhibition other than exhibition by means of any type of antenna or cable television within the limits of,—

TABLE

Serial No.	Area	Rate of entertainment duty on payment for admission fixed by the proprietor
(1)	(2)	(3)
1	Within the limits of Brihan Mumbai Municipal Corporation.	45 per cent.
2	Within the limits of all other Municipal Corporations and Cantonments.	40 per cent.
3	Within the limits of “A” Class Municipal Councils.	34 per cent
4	Within the limits of “B” Class Municipal Councils.	28 per cent
5	Within the limits of “C” Class Municipal Councils.	22 per cent
6	Any other areas not covered by entries (1) to (5) above.	15 per cent

[(1A) Notwithstanding anything contained in clauses (a) and (b) of section 2 or in any other provisions in relation to the admission on payment contained in this Act, there shall be levied and paid to the State Government entertainments duty in the case of video game [at the rates specified in the TABLE below, namely :—]

TABLE

Serial No.	Area	Type of Video Game Machine	Rate of entertainment, duty per month, per machine (in Rupees)
(1)	(2)	(3)	(4)
1	Within the limits of Brihan Mumbai Municipal Corporation.	(1) Machine operated by one person (2) Machine operated by two persons simultaneously.	1,000 2,000
2	Within the limits of all Municipal Corporations other than Brihan Mumbai Municipal Corporation	(1) Machine operated by one person. (2) Machine operated by two persons simultaneously.	75 1,500
3	Within the limits of all other areas not covered	(1) Machine operated by one person.	500

Serial No.	Area	Type of Video Game Machine	Rate of entertainment, duty per month, per machine (in Rupees)
(1)	(2)	(3)	(4)
1	By entries 1 and 2 above	(1) Machine operated by two persons simultaneously.	1,000

[(1AA) In computing the duty and the surcharge under this Act, a fraction of a rupee less than 5 paise, or which is not a multiple of 5 paise, shall be rounded off to 5 paise, or to next higher multiple of 5 paise, as the case may be.]

(2) Where the payment for admission to an entertainment is made by means of a lump sum paid as a subscription or contribution to any society, or for a season ticket or for the right of admission to a series of entertainments or to any entertainments during a certain period of time, or for any privilege, right, facility or thing combined with the right to admission to any entertainment or involving such right of admission without further payment or at a reduced charge, [the entertainment duty shall be levied and paid on 50 per cent. of such lump sum at the rates specified in clause (b) of sub-section (1).]

*(3)(a) In lieu of the tax payable under clause (c) of sub-section (1) in the case of *** video exhibition [but excluding exhibition by means of any*

type of antenna or cable television] held in the places of entertainment specified in column (2) of the Table below and situated in the areas specified in column (1) of the said Table, the proprietor of such exhibition may, subject to such conditions as may be prescribed, pay the amount of duty to the State Government every week as specified in the corresponding entry in column (3) thereof.

TABLE

Serial No. (1)	Area (2)	Rate of entertainment duty on payment for admission fixed by the proprietor (3)
I.	(A) Within the limits of the areas of all Municipal Corporations, Cantonments of Pune, Solapur, Dehu Road, Deolali, Kamptee and Kirkee; (B) Within the limits of the areas of cities and towns having population of one lakh fifty thousand and above.	30 per cent. of the gross collection capacity for a show multiplied by 72 per cent. of the shows actually held. 30 per cent. of the gross collection capacity for a show multiplied by 68 per cent. of the shows actually held.
II	Within the limits of the areas of cities towns having population above twenty-five thousand but below one lakh fifty thousand.	20 per cent. of the gross collection capacity for a show multiplied by 72 per cent. of the shows actually held.
III	Any other areas with population upto twenty- five thousand and below.	15 per cent. of the gross collection capacity for a show multiplied by 60 per cent. of the shows actually held.]

Explanation.—For the purpose of this sub-section, “gross collection capacity” in relation to a [video exhibition] means the notional aggregate of all payments for admission for a show inclusive of the duty leviable under clause (c) of sub-section (1) if all the seats and other accommodation available and provided for the audience in the [video cinema] as specified in the licence issued by the Licensing Authority under the Maharashtra Cinemas (Regulation) Rules, 1966, were occupied by spectators.

[(a-a) In lieu of the tax payable under clause (c) of sub-section (1), in the case of exhibition by cinematograph but excluding video exhibition and exhibition by means of any type of antenna or cable television held in the places of entertainment specified in column (2) of the Table

below, the proprietor of such exhibition may, subject to such conditions as may be prescribed, pay the amount of duty to the State Government every week as specified in the corresponding entry in column (3) of the said Table.

TABLE

Serial No. (1)	Area (2)	Amount of entertainments duty (3)
	Within the limits of 'A' Class Municipal Councils.	30 per cent. of the houseful tax capacity of a show multiplied by the number of shows actually held.
2	Within the limits of 'B' Class Municipal Councils.	24 per cent. of the houseful tax capacity of a show multiplied by the number of shows actually held.
3	Within the limits of 'C' Class Municipal Councils.	18 per cent. of the houseful tax capacity of a show multiplied by the number of shows actually held.
4	All other areas not covered by entries 1 to 3 above but, excluding the areas of Municipal Corporations and Cantonments.	12 per cent. of the houseful tax capacity of a show multiplied by the number of shows actually held.

Explanation.—For the purposes of this sub-section, “housefull tax capacity”, in relation to a cinematograph exhibition, means the notional aggregate of duty for a show leviable under clause (c) of sub-section (1) if all the seats and other accommodation available and provided to the audience in the cinema theatre as specified in the licence issued by the Licensing Authority under the Maharashtra Cinemas (Regulation) Rules, 1966, were occupied by spectators.]

[(b) The duty leviable under this sub-section shall be recoverable weekly in accordance with the rates specified in column (3) of the Table to clause (a) [or clause (a-a), as the case may be,] from the proprietor taking into consideration the actual number of shows held by him in each week.]

[Explanation.—For the purpose of this clause, actual number of shows held by the proprietor in a week shall not include the shows of a tax free film held by him in the week.]

(c) Any proprietor who opts to pay duty under this sub-section shall apply in the prescribed form to the prescribed officer who permission to pay the duty under this sub-section.

(d) After the determination of gross collection capacity of a [video cinema or houseful tax capacity of a cinema theatre], no change or modification either in the number of seats or accommodation or in the rates of payment for admission to such exhibition shall be made, unless the proprietor has given fifteen day's notice thereof to the prescribed officer and, until the gross collection capacity of [video cinema or houseful tax capacity of a cinema theatre, as the case may be,] is re-determined the proprietor shall pay the duty as previously fixed.]

(e) No proprietor of a [video cinema or a cinema theatre, as the case may be,] to which this sub-section is applicable shall collect or cause to be collected any amount either by way of duty or otherwise in excess of the payment for admission taken into consideration for calculating the gross collection capacity [or houseful tax capacity, as the case may be,] of such exhibition.

(f) Notwithstanding anything contained in this sub-section, where a cinematograph film is allowed exemption from, or reduction in, the payment of duty under section 6, the rates of payment for admission shall be reduced in respect of each admission to the extent of the duty exempted or reduced in respect of such payment. Where a proprietor does not reduce the rates of payment for admission, he shall, in addition to any other penalty under this Act, be liable to pay duty as if no exemption or reduction from the payment of duty was made under section 6.

(g) In calculating the reduction in the rates of payment for admission under clause (f), the gross collection capacity [or houseful tax capacity as the case may be,] for the purpose of payment of such reduction of duty shall be the same as specified in the Explanation to clause (a) [or clause (a-a), as the case may be].

(h) The option permitted under this sub-section shall be exercised once in a calendar year and the proprietor shall not be permitted to withdraw the same during that calendar year.

(i) No proprietor of [Video exhibition or Cinematograph exhibition, as the case may be,] who fails to pay duty under this sub-section shall conduct such [Video exhibition or Cinematograph exhibition, as the case may be,] unless he gives security of such amount and in such manner as the State Government may, by general or special order, specify for the payment of duty under this sub-section.

(j) Notwithstanding anything contained in this sub-section, in case where no show has been held in the place of exhibition [specified in the Tables under clause (a) or (a-a), as the case may be,] continuously for the entire week, the Commissioner shall after such enquiry as he may deem necessary and subject to such conditions as may be

prescribed, remit the duty payable under this sub-section as relates to the exhibition concerned for the week during which no show has been held.]

32. Section 3 of the ED Act is a charging section for levy and payment of entertainment duty on payments for admission to entertainment.

33. Section 3(1) provides for rates of entertainment duty on various items of entertainment based on the area in which such entertainment takes place. For example, in the case of entertainment specified in Section 3(1)(b), the rate of entertainment duty on payment for admission, within the area of Brihanmumbai Municipal Corporation, is 25% and other Municipal Corporations are 20%. Section 3(1)(c) provides for the rate of entertainment duty on exhibition by cinematograph including video exhibition. The rate is 45% if the exhibition is within the limits of Brihanmumbai Municipal Corporation and 40% if within the limits of other Municipal Corporations. Section 3(1A) provides for a fixed amount of entertainment duty on video game machines. Section 3(2) provides for the rate of entertainment duty with respect to lump sum paid as a subscription or for a season ticket etc.

34. Section 3(3)(a) which deals with video exhibition provides for an alternative mechanism of levy of entertainment duty in lieu of Section 3(1)(c). Under this Section the amount of duty calculated is based on a notional formula provided under the table to Section 3(3)(a). For example, if the entertainment is within the limits of areas of all Municipal Corporations, Cantonments of

Pune, Solapur etc., the amount of duty is calculated at 30% of the gross collection capacity for a show multiplied by 72% of the shows actually held. Explanation to Section (3)(3)(a) defines “gross collection capacity” to mean notional aggregate of all ***payments for admission*** for a show inclusive of the duty leviable under clause (c) of Sub-Section (1), if spectators occupied all the seats and other accommodation available.

35. Section 3(3)(a-a) of the ED Act provides for calculation of entertainment duty with respect to cable television and the calculation is based on a certain percentage of the “houseful tax capacity” of a show multiplied by the number of shows actually held. Explanation to Section 3(3)(a-a) defines “houseful tax capacity” to mean notional aggregate of duty for a show leviable if all the seats were occupied by the spectators.

36. Section 3(3)(b) provides that duty calculated under Section 3(3)(a) and (a-a) shall be recoverable weekly in accordance with the rates specified in the table from the proprietor taking into consideration the actual number of shows held in each week.

37. Therefore, what Section 3(3) and its various clauses mentioned above provides for, is an alternate mechanism for calculation of entertainment duty based on notional gross collection or houseful tax capacity defined therein rather than a certain percentage of the admission fee. Merely, because the notional gross collection is considered as a basis for calculating the amount of duty, does not mean that the Respondents have the power to prohibit collection of convenience fee by issuing G.O.s.

38. Section 3(3)(e) provides that no proprietor of a video cinema or a cinema theatre to which the sub section is applicable shall collect any amount either by way of duty or otherwise in excess of the payment for admission taken into consideration for calculating the “gross collection capacity” or “houseful tax capacity” as the case may be of such exhibition. In our view, if according to the Respondents Section 3(3)(e) empowers them to prohibit collections of convenience fees then there was no need for issuing G.O.’s since the provision of Section 3(3)(e) was in existence much before the date on which the impugned G.O.s were issued.

39. In any case, in our view, section 3(3)(e) only prohibits collection of an amount more than what was considered for calculating gross collection capacity or houseful tax capacity. For example, if for the purpose of “gross collection capacity” or “houseful tax capacity” payment for admission is considered at Rs.100/- and the percentage specified in Section 3(3)(a) and (a-a) is applied to arrive at the amount of duty, then in such a case after arriving at the said amount of duty on the basis of Rs.100/-, the video cinema or cinema theatre cannot recover more than Rs.100/-. This is so because the amount of duty is calculated on the premise that Rs.100/- is the payment for admission. The said Section 3(3)(e) does not empower the Respondents to issue G.O.s to provide for prohibition on collection of convenience fee. It is one thing to say that convenience fee collected would form part of “gross collection capacity” for arriving at the amount of duty, and it is another thing to say that the theatre owner would not collect

convenience fee at all. Any such prohibition restricting collection of convenience fee per se cannot be justified by taking recourse to Section 3(3)(e). Therefore, the contentions raised by the learned counsel for the Respondent by taking the aid of this provision cannot be accepted.

40. Section 4 provides for a method of levy. Section 4(1) provides that other than a person who has to perform some duty in connection with an entertainment or duty imposed under any law, no person shall be admitted to any entertainment except with a valid printed ticket or complementary ticket. Section 4(2) provides for an application to be made to the prescribed officer by a particular day for payment of the entertainment duty and on such application being made, the State Government by general or special order issued on that behalf allows the proprietor to pay the amount of entertainment duty. Clause (b) on which the learned counsel for the Respondent has placed reliance only states that the same shall be in accordance with returns of the payment for admission to the entertainment and on account of the duty. The phrase “on such conditions” in Section 4(2)(b) would mean conditions relating to payment of entertainment duty and not condition prohibiting collection of convenience fees. In our view, Section 4(2)(b) of the ED Act only deals with methods of collecting the entertainment duty but it does not empower the Respondents to issue a G.O. prohibiting collection of convenience fees as already observed by us above. The issue before us is not the collection of entertainment duty on the convenience fee but the issue before us is prohibition issued by the G.O.s from collecting

the convenience fees. Therefore, we do not accept this submission of the Respondent that by virtue of Section 4(2)(b) the Respondents are empowered to issue the impugned G.O. to the extent challenged herein.

41. In *Shri Durga Chand Kaushik and Anr. Vs. Union of India*³, an issue arose before the Delhi High Court under the Delhi Cinematograph Rules, 1953, that for obtaining the licence, the condition of fixing the rates of admission to the auditorium was *ultra-vires*. The Delhi High Court on perusal of various Sections of the Cinematograph Act, 1952 held that there is no provision which provides for price control of cinema tickets and the regulation of the rates of admission to cinema auditoriums is not a policy stated in the said Act. The Court further observed that it is neither a purpose sought to be achieved by the said Act nor means to achieve any other purpose stated in the Act. The Court observed that even if the power to grant the licence is wide and unrestricted, it has to be read in the context in which they appear. It will mean only such conditions and restrictions such as safety of persons attending exhibitions of film etc. and it cannot include price control of cinema tickets. In our view, in the present case also, the object for which ED Act is enacted and the Rules made thereunder, the Respondents do not have any power to prohibit the Petitioners from recovering convenience fees. The said restriction is neither for securing the payment of the duty nor for carrying into effect the provisions of the Act.

³ ILR (1979) 2 Del. 730

42. We have not been shown any provision of the ED Act, which empowers the Respondents to regulate the price to be recovered from the customer. On a reading of Section 3 as a whole and read with definition of “payment of admission” as defined by Section 2(b) of the ED Act, we do not find any provision which empowers the Respondents to impose any restriction or prohibition on collection of convenience fees. Now we propose to analyse Section 2(b) of the ED Act.

43. Section 2(b) of the ED Act reads as under :-

(b) “payment of admission” [in relation to the levy of entertainments duty,] includes,—

(i) any payments made by a person who, having been admitted to one part of a place of entertainment, is subsequently admitted to another part thereof for admission to which a payment involving duty or more duty is required ;

(ii) any payment for seats or other accommodation in a place of entertainment;

(iii) any payment for a programme or synopsis of an entertainment;

[*]*

(iii-a) any payment made for the loan or use of any instrument or contrivance which enables a person to get a normal or better view or hearing, of the entertainment which, without the aid of such instrument or contrivance, such person would not get; [* *]*

(iv) any payment, by whatever name called for any purpose whatsoever, connected with an entertainment, which a person is required to make, in any form as a condition of attending, or continuing to attend the entertainment, either in addition to the payment, if any, for admission to the entertainment or without any such payment for admission ;

(v) any payment made by a person for admission to a video exhibition irrespective of whether any eatables or beverages or both are or are not provided to him against such payment;]

(vi) any payment made by a person by way of contribution or subscription or installation connection charges or any other charges collected in any manner whatsoever for television exhibition with the

aid of any type of antenna with a cable network attached to it or cable television [*]*

(vii) any payment made by person to the proprietor of a Direct-to-Home (DTH) Broadcasting Service by way of contribution, subscription, installation or connection charges, or any other charges collected in any manner whatsoever for Direct-to-Home (DTH) Broadcasting Service with the aid of any type of set top box or any other instrument of like nature which connects TV set at a residential or non-residential place of connection-holder directly to the Satellite ; and

[(viii) any payment made by way of sponsorship amount for a programme which is organised only for invitees, without selling tickets ;

[Explanation.— For the purposes of this sub-clause any expenditure incurred by any co-operative society including a co-operative housing society or by the management of, any factory, hotel, lodge, bar, permit room, pub, or by a person or group of persons, for the purchase of any type of antenna or any other apparatus for securing transmission through the cable network or cable television attached to it, for its members, or for workers or customers or for himself or themselves, as the case may be, shall be deemed to be the payment made under this sub-clause for the television exhibition with the aid of any type of antenna with cable network attached to it or cable television :]

Provided that, where regular tickets are not issued by the proprietor for admission to a video exhibition and the amount charged to a person admitted to the exhibition is inclusive of the price for any eatables or beverages or both, then seventy-five per cent., of such amount shall be deemed to be payment for such admission :]

[Provided further that, subject to the provisions of sub-section (13) of section 3] any payment not exceeding [seven rupees in case of ordinary and air-cooled cinemas and nine rupees in case of air-conditioned cinemas] per ticket it charged proprietor towards service charges separately the proprietor shows to the satisfaction of the prescribed officer as defined in the rules made under this Act that the amount of such service charges is spent by him towards maintenance and providing facilities and safety measures in the permanent cinema 1[or quasi-permanent cinema] in addition to those required under the provisions of the Bombay Cinemas (Regulation) Act, 1953 (Bom. XI of 1953) and the Maharashtra Cinemas (Regulation) Rules, 1966, or any other law for the time being in force, such service charges shall not be included in the payment for admission;

[Provided also that, the proprietor shall submit, before the 30th September of every year, to the prescribed officer the audited

accounts of the service charges collected and spent by him towards maintenance and providing facilities and safety measures as provided in the second proviso. The proprietor shall be allowed to carry forward unspent amount of service charges for 4[four financial years] immediately following the financial year in which the amount has remained so unspent. If the prescribed officer on perusal of the accounts is satisfied at the end of the admissible period for which the proprietor is allowed to carry forward the unspent amount of the service charges or part thereof, that, the said amount has not been spent towards the maintenance and providing facilities and safety measures as provided in the second proviso, then the said amount of service charges or part thereof, not so spent shall be included in the payment for admission and thereupon, the provisions of sub-sections (2) to (5) of section 4-B shall, mutatis mutandis, apply for the purpose of assessment of the entertainments duty at the rate specified in clause (c) of sub-section (1) or clause (a) of sub-section (3) of section 3 of this Act:

[Provided also that, the proprietor shall be allowed to set off the amount spent in a financial year in excess of the amount collected as service charges in that financial year towards maintenance and for providing facilities and safety measures as provided in the second proviso, against the amount of the service charges which will be collected during the next four financial years immediately following the financial year in which the excess amount is spent:

[Provided also that, any payment not exceeding 7[one rupee] per ticket if charged by the proprietor of a touring cinema towards service charges, separately and the proprietor of such touring cinema shows to the satisfaction of the prescribed officer (as defined in the rules made under this Act), that such payment made is spent by him during the license period towards maintenance and providing facilities and safety measures in such touring cinema, as specified by the State Government (by notification in the Official Gazette issued in this behalf), in addition to those required under the provisions of the Bombay Cinemas (Regulation) Act, 1953 (Bom. XI of 1953) and the Maharashtra Cinemas (Regulation) Rules, 1966, or any other law for the time being in force, in that case, such payment towards service charges shall not be included in the payment for admission, subject to the condition that the proprietor of such touring cinema shall submit, to the prescribed officer within a period of one month from the date of expiry of license period, the audited accounts of the service charges collected and spent by him towards the maintenance and for providing the additional specified facilities and safety measures for such touring cinema:

[Provided also that, any payment of 10[one rupee] per ticket if charged by the proprietor of a permanent or quasi-permanent cinema having computerised ticket terminal network with the help of information technology through satellite, towards additional service charges, separately in that case, such payment towards additional service charges shall not be included in the payment for admission ;

[Provided also that, any payment not exceeding ten rupees or any such amount as may be specified by the State Government, from time to time, by notification in the Official Gazette, per ticket if charged by the proprietor himself or through any service provider towards service charges, separately for providing facility for online ticket booking in all entertainments, in that case, such payment towards such service charges shall not be included in the payment for admission, subject to the condition that the proprietor and the service provider shall submit the data of online tickets sold per month, and online internet handling fee or convenience charges charged thereof and also the certified copies of agreement for online ticket booking services to the Collector before seventh day of every succeeding month; and any amount of such service charges in any form more than ten rupees or more than such amount as may be specified by the State Government, from time to time, by notification in the Official Gazette, levied by the proprietor himself or through any service provider, for providing facility for online ticket booking, shall be included in the payment for admission.

Explanation.—For the purposes of this proviso, the expression “service provider” means and includes any person or any company or agent who is authorized or permitted by the proprietor of any entertainment to book online tickets through their website or portal or by any other means.

44. Section 2(b) which defines “payment of admission” is an inclusive definition and specifies various items which can be considered as payment of admission. For example, any payment made by way of sponsorship amount for a program which is organized only for invitees without selling tickets, in such a case sponsorship amount will be treated as payment of admission. Similarly, any payment for seats or other accommodation in a place of entertainment will be treated as payment of admission. All the instances specified in Section 2(b) only provides as to what

should be “payment of admission” on which the rate of duty specified in Section 3 can be imposed. Section 2(b) does not empower the State to provide as to what should be collected and what should not be collected from the customer. What it provides is that the collection mentioned therein would be treated as “payment of admission” and the levy of duty under Section 3 would thereafter be on such payment of admission. Therefore, in our view, the Respondents cannot take the aid of Section 2(b) of the ED Act to confer upon themselves the power to issue G.O.s for prohibiting the collection of the convenience fees.

45. We have perused the Bombay Entertainments Duty Rules, 1958 but could not find any source empowering Respondents to issue such G.O.s to regulate or prohibit collection of convenience charges/fees. The learned AGP has also not pointed out any Rule in this direction; Rules deal with purchase and issue of stamps, what should be printed on ticket, payment of duty, exemptions, issues relating to season and complimentary ticket, inspection etc. Therefore, even on this count we could not uphold the impugned G.O.s to the extent challenged before us.

46. Now we propose to examine whether such G.O.s, which prohibit the collection of a convenience fee, are violative of Article 19(1)(g) of the Constitution.

47. On 9 July 2014, this Court, while granting interim relief in paragraph 7, recorded the submission of learned Advocate General that the State Government is in the process of considering the introduction of a suitable ordinance or statutory rules in order to

deal with the situation, and it is likely to take a few weeks. Subsequently on 29 December 2014, an amendment was made to Section 2(b) of the ED Act providing for such convenience fees to be treated as payment towards admission. Therefore, this supports the case of the Petitioner that the intention of the legislature was to treat convenience fees as “payment towards admission” by bringing suitable law, but the G.O. did not state so, and on the contrary it prohibited collection of convenience fees, which has been observed by us above is not in accordance with the provisions of the Act.

48. Article 19(1)(g) of the Constitution of India provides for protection of the right to practice any profession or to carry on any occupation, trade or business. Article 19(6) of the Constitution of India provides that nothing in sub-clause (g) shall prevent the State from making any law imposing, in the interest of general public, reasonable restrictions on the exercise of the right conferred by the State and in particular preventing the State from making any law relating to professional or technical qualifications necessary for practicing any profession or for carrying on any occupation, trade or business or the carrying on by the State, or by a corporation owned or controlled by the State of any trade, business, industry or service, whether to the exclusion, complete or partial or otherwise.

49. The restriction/prohibition imposed by the G.O.s impugned in the present petition interferes with the right of the Petitioner to carry on business, occupation or trade inasmuch as by the impugned G.O.s consideration to be agreed upon between two

private parties is sought to be regulated or interfered with and the Petitioners are barred from charging them any amount for the business they are engaged in. There was no argument about such business not being legitimate business or *res extra commercium*. Such a course of action on the part of the State cannot be permitted except in cases where there is a Statute or Law which governs the regulation of the price or consideration. For example, the Essential Commodities Act, 1955, the Defence of India Act, 1931, etc.

50. Admittedly, we have not been shown any Statute or Law which empowers the State to interfere with the charge of the consideration for undertaking this business. No statute regulating the collection of convenience fees was pointed out to us. On the contrary, Section 2(b) of the ED Act, indicates that theatre owners and other persons can charge any amount to their customers. Still, such amount will be considered for the purpose of determining and computing the duty. Therefore, there is no restriction which was shown to us under the ED Act for collecting the convenience fees. To impose any restriction upon a legitimate business, firstly, there must be a law enacted by a competent legislature. Secondly, any restriction imposed by the law must be based on the grounds specified in Article 19(6) and must also pass the test of reasonableness. Article 19(6) of the Constitution of India, would apply only if the restriction is imposed by an enactment or law. In the absence of any such law prohibiting the collection of convenience fees, issuing impugned G.O.s cannot be saved by provisions of Article 19(6) inasmuch as the impugned G.O.s are

neither laws enacted by the legislature, nor is any source of power under which they are issued disclosed or discernible.

51. The Petitioner's business model is not shown to be illegitimate; the charge being collected on such business, therefore, cannot be barred without enacting any law and merely by issuing the impugned G.O.s. This would amount to imposing unreasonable restrictions on the right to carry on business without enacting any law. This is not a case where the duty on admission fee to the entertainment is being regulated, but what is sought to be achieved by the impugned G.O. s is to prohibit the Petitioners from collecting convenience fees which would be outside the realm of the ED Act.

52. As observed above, we have not been shown any law on the basis of which the Respondents can invoke Article 19(6) to justify the issuance of impugned G.O.s. In our view and on a conjoint reading of Articles 19(1)(g) and 19(6) where power is conferred on the executive to regulate and to control the exercise of the freedom conferred by Article 19(1)(g), it is necessary that the law which does, should either lay down the circumstances or grounds on which the discretion is to be exercised. In other words, the Act must furnish sufficient guidance to the executive in the matter of the exercise of discretionary power. It is enough if such guidance could be found on a fair reading of the Act, and the other relevant circumstances. In the instant case, we have already observed above that in the ED Act there is no power shown to us by which the impugned G.O.'s prohibiting collection of convenience fee could be issued.

53. The legislation touching upon price control in India has always been specific, eloquent and reasonable, even though important, restriction on the right to carry on business has never been sought to be achieved indirectly or by implication and without setting out a statement of the policy of the legislature on this behalf. Infact, numerous price control orders made in India derive their authority from one or the other of the enactments and their validity has always been judged, having regard to the provisions of this principal enactments.

54. The law is now well settled that any law which is made under clauses (2) to (6) of Article 19, to regulate the exercise of the right to the freedom guaranteed by Article 19(1) must be 'a law' having statutory force and not a mere executive or departmental instruction. Applying the said well settled principle to the facts of the present case, we have no doubt that the impugned G.O.s inasmuch as they prohibit the Petitioner from collecting the convenience fees does not have any statutory basis and, therefore, cannot form the foundation of any action aimed at denying fundamental right under Article 19(1)(g).

55. Therefore, in our view, the impugned G.O.s, to the extent that they prohibit collection of convenience fees on the tickets booked online, violates Article 19(1)(g) of the Constitution of India, and therefore, the impugned G.O.s to the extent challenged herein is required to be quashed and set aside.

56. We now propose to examine whether the impugned notification can be saved by invoking Article 162 of the Constitution of India.

57. Article 162 of the Constitution of India provides that subject to the provisions of this Constitution the executive power of a State shall extend to the matters with respect to which the legislature of the State has power to make laws. Therefore, the pre-condition for invoking Article 162 of the Constitution is the existence of a law under which such directions can be issued. In the instant case before us, there is no enactment shown to us which empowers the State to regulate the consideration between the theatre owner and its customer. There is no price control order governing the transaction under consideration or price control order issued under a particular Act or law. Therefore, in the absence of any Act regulating the private contract between the two parties, the Respondents would not be justified in taking the shelter of Article 162 of the Constitution of India to save the impugned G.O.s from being quashed and set aside.

58. The Hon'ble Supreme Court in the case of *State of Bihar (supra)* in paragraph 69 has observed that the requirement of law for the purpose of clause (6) of Article 19 of the Constitution of India can by no stretch of imagination be achieved by issuing a circular or a policy decision in terms of Article 162 of the Constitution or otherwise. Such a law must be one enacted by the legislature.

59. In *Rai Sahib Ram Jawaya Kapur & Ors. vs. State of Punjab*⁴, the Hon'ble Supreme Court observed as under:-

“17. Specific legislation may indeed be necessary if the Government require certain powers in addition to what they possess under

4 AIR 1955 SC 549

ordinary law in order to carry on the particular trade or business. Thus when it is necessary to encroach upon private rights in order to enable the Government to carry on their business, a specific legislation sanctioning such course would have to be passed.”

60. Therefore, the G.O.s issued by the Respondent without fulfilling the mandatory provisions of Article 162 of the Constitution cannot be categorised as a decision by a State and, therefore, it cannot be said that the State is empowered to issue the G.O.s prohibiting collection of convenience fee.

61. We draw support for our above analysis from the decision of the Supreme Court in the case of ***Indian School, Jodhpur & Anr. vs. State of Rajasthan & Ors.***⁵ and more particularly paragraphs 113 to 117 which read as under:-

“113. A fortiori, even the argument of the Respondents relying upon the existence of executive power under Article 162 of the Constitution, ought to fail. It is well-established position that the executive power of a State under Article 162 of the Constitution extends to the matters upon which the legislature of the State has competency to legislate and is not confined to matters over which legislation has already been passed. It is also well settled that the State Government cannot go against the provisions of the Constitution or any law. The subject of determination of fee structure and whether it entails in profiteering, is already covered by the legislation in the form of the 2016 Act and the Rules framed thereunder. It is not as if there is no enactment covering that subject or any incidental aspects thereof. The 2016 Act, which in itself is a self-contained code on the said subject, not only provides for the manner in which the school concerned ought to finalise its fee structure, but also declares that the fee so finalised either by consensus or through adjudication mode shall be binding on all concerned for a period of three academic years. In any case, determination of fees including reduction thereof is the exclusive prerogative of the management of the private unaided school. The State can provide independent

mechanism only to regulate that decision of the school management to the extent that it does not result in profiteering and commercialisation.

114. Viewed thus, reliance placed on Union of India v. Moolchand Kharaiti Ram Trust will be of no avail. In that case, the hospitals were obligated to render free treatment in lieu of allotment of government land to them for earning no profit and held in trust for public good. The Court opined that there was no necessity of enacting a law and the policy formulated by the State Government in that regard cannot be disregarded.

115. In the present case, we need not dilate on the factum as to whether the Director, Secondary Education could have issued such a policy document in exercise of executive power under Article 162 of the Constitution, which power exclusively vests in the State Government alone. The fact remains that the direction issued in terms of impugned order dated 28-10-2020, on the face of it, collide with the dispensation specified in the 2016 Act in the matter of determination of school fees and its binding effect on all concerned for a period of three academic years, without any exception. The fact that in the proceedings before the High Court the State Government had ratified the impugned order, does not take the matter any further. In that, there can be no ex post facto ratification by the State Government in respect of subject, on which, it itself could not issue such direction in law.

116. Even the exposition in Ram Jawaya Kapur v. State of Punjab³⁷ and A.P.D. Jain Pathshala v. Shivaji Bhagwat More ³⁸ will not come to the aid of the respondents for the same reasons. Notably, not only the subject of finalisation of fee structure and the matters incidental thereto have been codified in the form of the 2016 Act, but also a law has been enacted to deal with the matters during the pandemic situation in the form of Central Act, namely, the 2005 Act including the State legislation i.e. the 2020 Act. In fact, the State legislation deals with the subject of epidemic diseases and its management. Even those enactments do not vest any power in the State Government to issue direction with regard to commercial or economic aspects of matters between private parties with which the State has no direct causal connection, which we shall examine later at the appropriate place. In other words, the power of the State Government to deal with matters during the

pandemic situation have already been delineated by Parliament as well as the State Legislature.

117. As such, it is not open to the State Government to issue directions in respect of commercial or economic aspects of legitimate subsisting contracts/transactions between two private parties with which the State has no direct causal connection, in the guise of management of pandemic situation or to provide "mitigation to one" of the two private parties "at the cost of the other". This is akin to rob Peter to pay Paul. It is a different matter, if as a policy, the State Government takes the responsibility to subsidise the school fees of students of private unaided schools, but cannot arrogate power to itself much less under Article 162 of the Constitution to issue impugned directions (to school management to collect reduced school fee for the concerned academic year). We have no hesitation in observing that the observation of the State Government of existence of power to issue directions even in respect of economic aspects of legitimate subsisting contracts/transactions between two private parties, if accepted in respect of fee structure of private unaided schools, is fraught with undefined infinite risk and uncertainty for the State. For, applying the same logic the State Government may have to assuage similar concerns in respect of other contractual matters or transactions between two private individuals in every aspect of life which may have bearing on right to life guaranteed under the Constitution. That would not only open pandora's box, but also push the State Government to entertain demands including to grant subsidy, from different quarters and sections of the society in the name of mitigating measures making it financially impossible and unwieldy for the State and eventually burden the honest tax payers who also deserve similar indulgence. Selective intervention of the State in response to such demands may also suffer from the vice of discrimination and also likely to impinge upon the rights of private individual(s) the supplier of goods or service provider, as the case may be. The State cannot exercise executive power under Article 162 of the Constitution to denude the person offering service(s) or goods of his just claim to get fair Compensation/cost from the recipient of such service(s) or goods, whence the State has no direct causal relationship therewith."

62. We have already clarified above that the issue before us is not whether entertainment duty on convenience fees should be levied or not, but the issue before us is whether the Respondents, by issuing impugned G.O. can prohibit the Petitioners from collecting the convenience fees. In our view, the said decision of Delhi High Court supports the submissions made by the Petitioners.

63. We are, therefore, of the view that the impugned G.O. transgressed the fundamental rights under Article (19)(1)(g) granted to the Petitioners by prohibiting theatre owners and others from collecting the convenience fees from their customers. Absent a Statutory regulation which regulates the right to conduct the business of the Petitioner, the imposition of such a restraint would infringe the legitimate rights of theatre owners. The impugned prohibition is directly contrary to Article 19(1)(g) of the Constitution of India. If business owners are not permitted to determine the various facets of their business (in accordance with law), economic activity would come to a grinding halt. The choice of whether to book the ticket online or purchase it at the theatre is left to the customers.

64. Suppose the customer feels it convenient to book the tickets online by not going to the theatre and paying the convenience fees. In that case, the Respondents cannot restrain the Petitioners from collecting the convenience fees since for providing this facility of online booking, the theatre Owners/Petitioners have to invest in the technology.

65. We once again make it clear that we are not deciding whether an entertainment duty is liable to be paid on such convenience fees.

66. Because of the above, the impugned G.O. clause 3(d) of 4 April 2013 and clause (a) of G.O. dated 18 March 2014 are quashed and set aside.

67. We make it clear that in the present petition, we have not examined the validity of the amendment made on 29 December 2014 to Section 2(b) of the ED Act but the present petition only concerns the period prior to 29 December 2014 and the empowerment of the Respondents for issuing G.O.'s to the extent of prohibition to collect convenience fees.

68. Mr. Rajadhyaksha appearing for the Petitioner in Writ Petition No.1755 of 2013 has in addition to the submissions made by Mr. Thacker, also made additional submissions that they are not covered by the G.O.s since they are not the agents of Cinema hall's exhibitors or owners and, therefore, the G.O.s are bad in law. He further made submissions on Article 14 of the Constitution and stated that online service providers such as IRCTC, MakeMyTrip, etc., who also charge additional service charges are not subject to any restrictions and, therefore, the G.O.s are discriminatory. We do not propose to deal with both these contentions since in the analysis made by us above, the G.O.s are unconstitutional and, therefore, insofar as these two submissions are concerned, we keep the issue open to be decided in an appropriate manner.

69. These Petitions are allowed by declaring clause (a) of G.O. dated 18 March 2014 and clause 3(d) of G.O. dated 4 April 2013 as unconstitutional to the extent it prohibits collection of convenience fees/service charges on online ticket booking. The interim orders granted earlier are now made absolute.

70. No order for costs.

(Jitendra Jain, J.)

(M. S. Sonak, J.)