

2023 LiveLaw (SC) 38

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE / ORIGINAL JURISDICTION**

DR. DHANANJAYA Y. CHANDRACHUD; CJI., PAMIDIGHANTAM SRI NARASIMHA; J.
Civil Appeal No 77 of 2023 (Arising out of SLP(C) No 20784 of 2018); January 03, 2023
K C Cinema (Correct Name K C Theatre) versus State of Jammu and Kashmir & Ors.

Summary:- Supreme Court upholds the right of cinema theatres and multiplexes to prohibit the taking of food and beverages from outside.

Right of cinema theatres to prohibit outside food - The condition of entry is imposed as a direct result of the exercise of the right of cinema owners to carry on a business or trade under Article 19(1)(g) of the Constitution. The commercial logic of prohibiting movie goers from carrying their own food to the cinema hall is to stimulate and boost a vital aspect of the business – the sale of food and beverages. 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. While movie goers may have no choice but to sign on the proverbial dotted line (and thereby not carry any food of their own into the theatre) in order to enter the cinema hall and watch a movie of their choice, this does not by itself render the condition of entry unfair, unreasonable or unconscionable. (Para 31)

Restriction on bringing food and beverages in theatres from outside is not unfair, unreasonable or unconscionable. (Para 30) - Whether or not to watch a movie is entirely within the choice of viewers. If viewers seek to enter a cinema hall, they must abide by the terms and conditions subject to which entry is granted. Having reserved the right of admission, it is open to theatre owners to determine whether food from outside the precincts of the cinema hall should be permitted to be carried inside (Para 27)

WITH Civil Appeal No 78 of 2023 (Arising out of SLP(C) No 20904 of 2018) Civil Appeal No 79 of 2023 (Arising out of SLP(C) No 21924 of 2018) Transferred Case No 28 of 2019 Transferred Case No 29 of 2019

(Arising out of impugned final judgment and order dated 18-07-2018 in PIL No. 11/2018 passed by the High Court of Jammu & Kashmir and Ladakh at Jammu)

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Dr Dhananjaya Y Chandrachud, CJI

Civil Appeal Nos 77, 78 and 79 of 2023

1. Leave granted.

A. Background

2. This batch of appeals arises from a judgment dated 18 July 2018 of a Division Bench of the High Court of Jammu and Kashmir. A public interest litigation was instituted before the High Court by two practicing advocates with the grievance that cinema theatres in Jammu and Kashmir were prohibiting movie goers from bringing eatables inside cinema halls. In this context, it was averred that cinema owners paste a notice outside the hall indicating the prohibition and that security personnel search the belongings of every cinema goer with a view to enforce the prohibition. In the event that movie goers are found in possession of eatables, they are (it was alleged) prevented from entering the cinema hall.

3. The submission which was urged before the High Court was that, as a consequence of the prohibition, movie goers are compelled to consume food and beverages which are made available within the precincts of cinema halls resulting in the audience being required to purchase food at “highly exorbitant rates.” Moreover, it was submitted that the food which is sold is not necessarily of a nutritious quality and that persons with chronic diseases (such as diabetes) may be required to eat a specific type of food which would not be available at the movie hall.

4. The High Court was persuaded to grant relief in the public interest litigation on the basis of its findings in paragraph 6, which is extracted below:

“6. A perusal of these rules reveals that no where it has been provided that cinemagoers can be prohibited from carrying their own food articles and water bottles to multiplexes or private vendors are allowed to sell food inside such multiplexes/cinema hall premises at highly exorbitant prices. Therefore, in absence of any such provision, cinema goers cannot be forced or compelled by the multiplexes/cinema hall owners to purchase food and water from theatre premises nor they can be prohibited from carrying food items into malls and multiplexes from outside. Even the viewers, who come along with their infants/babies, also need milk to feed them because they cannot be kept empty stomach for about three long hours. The restrictions on bringing outside food to theatres and compelling/forcing to purchase junk food, sold at the food stalls inside theatre premises, that too at exorbitant rates, particularly affect young generation, senior citizens, diabetic patients and those who cannot eat for medical reasons. Such kind of acts on the part of Multiplex/Cinema Hall owners are against the right to choice of food, including the right not to eat junk food and right to good health, which comes under the purview of Article 21 of the Constitution of India guaranteeing protection of life and personal liberty of every citizen.”

5. The High Court noted that the State Government had notified the Jammu and Kashmir Cinemas (Regulation) Rules 1975.¹ The High Court held that:

a. The 1975 Rules do not prohibit cinema goers from carrying their own food articles and water bottles to multiplexes or cinema halls;

b. As a consequence of the prohibition which is imposed by cinema hall owners, viewers are compelled to purchase food of such nature as is offered for sale within the precincts of the theatre;

c. Infants who are required to be fed at periodic intervals cannot as a consequence, be given food by accompanying parents or guardians;

d. Viewers are compelled to purchase “junk” food at the food stalls within the theatre and are required to pay exorbitant charges for the food which is purchased. This particularly affects the younger generation, senior citizens, patients with diabetes, and those who are unable to eat the food sold within the theatre premises for medical reasons; and

e. The prohibition on carrying outside food and beverages into the movie theatre violates the right to choice of food, including the right not to eat “junk” food and the right to good health, under Article 21 of the Constitution.

6. The High Court, while accepting the grievances, issued a slew of directions in the impugned judgment and order. The challenge to the judgment of the High Court is confined to direction (i) which is extracted below:

“i. Multiplexes/Cinema Halls Owners of the State of J&K are directed not to prohibit cinema goers/viewers henceforth from carrying his/her own food articles and water inside the theatre.”

7. Mr K V Viswanathan, senior counsel, appearing with Mr Niranjan Reddy, senior counsel and Mr Sumeer Sodhi, on behalf of the appellants submitted that:

a. The precincts of a cinema hall constitute private property into which admission is reserved by the owner of the theatre;

b. The 1975 Rules which have been framed by the State Government do not provide that the movie goer should be allowed to bring eatables or beverages from outside into the precincts of the cinema hall;

c. There is no compulsion on any person either to visit the theatre or to purchase food within the precincts of the theatre once they have bought a ticket to view a movie;

d. As regards the sale of drinking water, cinema halls make adequate provisions to ensure that hygienic drinking water is made available free of cost within the precincts of the movie theatre for movie goers so that they are not compelled to pay for packaged drinking water;

e. As a matter of practice, the prohibition of bringing food or beverages from outside the hall is not enforced in the case of infants and babies, for whom the parents or accompanying guardians are allowed to bring a reasonable quantity of food or beverages which may be required for the duration of their visit to the theatre; and

f. The cinema tickets issued by the appellant theatre in Civil Appeal No. 78 of 2023 to the movie goers stipulate that eatables from outside as well as bottles (empty

¹ “1975 Rules”

or filled) are not allowed inside the cinema hall. The tickets also mention that the cinema reserves the right of admission.

8. On the other hand, Mr Bimal Roy Jad, senior counsel appearing on behalf of the original petitioners before the High Court (Respondents No. 3 and 4 in these proceedings), submitted that:

a. The cinema ticket which is issued by the cinema hall represents a contract with the movie goer and in the absence of any prohibition on

the printed terms of the ticket, a movie goer cannot be prevented from bringing eatables or beverages inside the theatre;

b. As a consequence of the prohibition which is imposed by the cinema hall, the movie goers are placed at a substantial inconvenience since they are required to purchase food and beverages at exorbitant rates within the movie halls; and

c. The 1975 Rules do not contain any prohibition on bringing food or beverages from outside within the precincts of the cinema halls.

B. Cases relied upon by the respondents

9. Counsel for the respondents has relied on the following judgments in support of the directions issued in the impugned judgment:

a. **Parker v. The South Eastern Railway Co** (1877) 2 CDP 416;

b. **Olley v. Marlborough Court Ltd** (1949) 1 KB 523;

c. **McCutcheon v. David Macbrayne Ltd** (1964) 1 WLR 125; and

d. **Thornton v. Shoe Lane Parking Ltd** (1970) EWCA Civ 2.

10. In order to understand whether the rulings in these judgments are applicable to the case before us, it is necessary to advert to the context in which they originated, the question(s) of law which fell for the court's determination, and the relief claimed therein.

11. In **Parker's case** (supra), the plaintiff deposited some of his belongings with the cloakroom at a railway station. At the time of depositing them, he received a ticket which had the words "see back" printed on it. The reverse side of the ticket contained a term stating, "*the company will not be responsible for any package exceeding the value of 10l.*" A placard with the same condition printed on it was also hung on the wall. The plaintiff's belongings were lost or stolen and he brought an action against the defendant for the value of the lost articles. The plaintiff had not seen the condition regarding the defendant's liability for any articles deposited, either on the ticket or on the placard on the wall. The question before the court in that case was whether the respondent was liable for the loss of the plaintiff's belongings.

12. In **Olley's case** (supra), the plaintiff was a paying guest in the defendant's hotel. After paying for the room, she received her keys and went to her room. There, a notice containing numerous terms and conditions was displayed. One of the conditions was "*The proprietors will not hold themselves responsible for articles lost or stolen, unless handed to the manageress for safe custody.*" The plaintiff's possessions were later stolen from her room. The plaintiff instituted a suit against the defendant and claimed the value of the goods stolen from her. The court was required to adjudicate whether the defendant could rely on the terms of a contract to exempt itself from liability under

common law. In other words, the question that arose for determination was whether the defendant was responsible for the loss suffered by the plaintiff.

13. In **McCutcheon's case** (supra), the plaintiff engaged an agent to have his car delivered to another town by sea. The agent paid the defendant, received a receipt, and delivered the car. The car was loaded onto the ship which set sail. Before it could reach its destination, however, it sank due to the negligence of the defendant's employees. The plaintiff sued the defendant for the value of his car. The defendant disclaimed liability on the ground that it usually asked customers to sign a risk note which contained certain terms and conditions regarding its liability for damage to the goods shipped by customers. No such risk note was signed by the plaintiff's agent in this case, but he had signed risk notes on previous occasions when he had used the defendant's shipping services. The defendant argued that it would not be liable for the loss of the car because the plaintiff's agent was aware of the terms and conditions in the course of their dealings with one another. In this case, too, the question which arose for the court's consideration was whether the defendant could be held liable for the loss of the plaintiff's car.

14. Finally, in **Thornton's case** (supra), the plaintiff drove to an automatic car park owned by the defendant. The charges for availing of this service were displayed outside the car park. The plaintiff drove to the entrance and a machine dispensed a ticket which said, "*This ticket is issued subject to the conditions of issue as displayed on the premises.*" The plaintiff parked his car in the car park. When he later returned there to collect his car, he suffered an accident and was severely injured. He instituted proceedings against the defendant seeking damages for his injuries. The question before the court was whether the defendant would be liable for the injuries sustained by the plaintiff.

15. All four cases concern the issue of whether liability can be affixed on one of the parties based on the terms and conditions of the contract in question. Each of the decisions addresses when the contract was entered into and what the terms of the contract were. The court considered whether a particular term which was intended by one of the parties to form a part of the contract, would in actuality form a part of the contract and bind the other party, thereby exempting the first party from liability for the loss suffered.

16. The case before us differs from the four cases relied upon by the respondents in that the original petitioners before the High Court did not file a suit for damages or other relief for a loss or injury suffered by them. They instituted a Public Interest Litigation and invoked the High Court's jurisdiction under Article 226 of the Constitution. They claimed the following relief in their petition before the High Court:

"(ii) Writ of prohibition prohibiting Respondents No. 3 – 6 from restraining the movie goers for taking with them outside eatables inside Cinema Halls required to be consumed during the time they see the feature film in the cinema hall"

17. By instituting a writ petition, Respondents 3 and 4 have invited an adjudication on whether the terms of entry determined and enforced by theatre owners are just and fair. The test to be applied by this Court would therefore not address which of the terms and conditions between the theatre owners and the movie goers are binding upon them and whether the prohibition on carrying outside food within the theatre premises is a binding term. Similarly, this Court is not called upon to decide whether Respondents 3 and 4 suffered any injury due to the enforcement of the prohibition on

outside food and whether they are entitled to damages, as a result of the injury suffered. Rather, this Court will evaluate whether this was a case fit for the exercise of the High Court's writ jurisdiction under Article 226 of the Constitution.

18. If it was the case of Respondents 3 and 4 that they had suffered some injury due to the prohibition on carrying food and beverages into the movie hall or that the terms of the contract were made known to them only at the time of its enforcement and they sought a refund of the amount paid for the ticket because they did not assent to such a term or damages, the proper remedy would be to file a suit and not to seek the issuance of a writ. The decisions in **Parker** (supra), **Olley** (supra), **McCutcheon** (supra), and **Thornton** (supra) which the respondents rely on do not have a bearing on the issue before this Court i.e., whether the High Court was justified in exercising its jurisdiction under Article 226 of the Constitution. It is therefore not necessary for this Court to address itself to the ratio decidendi of these cases any further.

C. The High Court has transgressed its jurisdiction under Article 226 of the Constitution

19. Article 19(1)(g) of the Constitution recognizes the right of citizens to practice any profession, or to carry on any occupation, trade or business. This right includes all activities which enable citizens to generate economic benefits and earn a livelihood.² The right recognized in Article 19(1)(g) is not an unfettered right and the state may impose reasonable restrictions on the exercise of that right, in terms of Article 19(6).

20. The fundamental aspect which needs to be noted is that the trade and business of operating cinema theatres is subject to regulation by the state. In this case, the State Government has framed the 1975 Rules to regulate the industry. Admittedly, the 1975 Rules do not contain a rule compelling the owner of a cinema theatre to allow a movie goer to bring food or beverages from outside within the precincts of the theatre. Similarly, other enactments and rules which regulate the industry, namely, the Cinematograph Act 1952, the Cinematograph (Certification) Rules 1983, the Jammu and Kashmir Cinematograph Act 1989, and the Jammu and Kashmir Cinematograph Rules 1989 do not contain a provision which requires theatre owners to permit movie goers to carry food and beverages of their own into the cinema hall. The rule making power of the state must be exercised consistent with the fundamental right of the cinema hall owner to carry on a legitimate occupation, trade, or business within the meaning of Article 19(1)(g) of the Constitution.

21. The majority opinion of a nine judge bench of this Court in **Mafatlal Industries Ltd. v. Union of India**³ was authored by Jeevan Reddy, J. who held that the High Court must have regard to legislative intent while exercising its jurisdiction under Article 226:

“108 (i). While the jurisdiction of the High Courts under Article 226 — and of this Court under Article 32 — cannot be circumscribed by the provisions of the said enactments, they will certainly have due regard to the legislative intent evidenced by the provisions of the said Acts and would exercise their jurisdiction consistent with the provisions of the Act ... This is for the reason that the power under Article 226 has to be exercised to effectuate the rule of law and not for abrogating it.”

² Alagaapuram R. Mohanraj v. T.N. Legislative Assembly, (2016) 6 SCC 82

³ (1997) 5 SCC 536

22. The legislature's omission of a provision requiring the cinema owner to allow eatables and beverages to be brought from outside is significant. In the absence of a specific mandate in the 1975 Rules (or any other applicable law) in this regard, the High Court was not justified in issuing a direction prohibiting theatre owners from disallowing food and beverages to be brought in by persons entering a movie theatre who enter it for viewing a film. The High Court has erred in the exercise of its writ jurisdiction under Article 226 of the Constitution. The exercise of its jurisdiction was not consistent with the provisions of the enactments regulating movie theatres.

23. The cinema hall is a private property of the owner of the hall. The owner of the hall is entitled to stipulate terms and conditions so long as they are not contrary to public interest, safety and welfare. Like with any other business, the proprietor or the management is entitled to determine the business model that is to be followed and to give effect to their own conceptions of the economic viability of a particular business model. The owner of a cinema hall is entitled to determine whether she will set up or engage an entity for setting up counters for the sale of food and beverages and to regulate the terms on which such sale should take place. A prohibition on carrying food and beverages from outside into the precincts of the movie hall is not contrary to public interest, safety or welfare.

24. Of late, multiplexes or movie halls are not operated or envisaged solely as places where movies are screened. A more accurate characterization of a movie hall is as an entertainment centre or as an entertainment bundle. The sale of different kinds of food and beverages forms a portion of the entire package of entertainment available at the cinema hall. In other words, a movie hall is not a movie hall alone but also doubles up as an eatery when food and beverages are sold within its premises. Viewed from this lens, it is immediately evident that patrons of a movie hall cannot demand to bring their own food to eat there when a condition to the contrary is enforced by the cinema hall owners. This would be akin to permitting a customer who visits a restaurant to carry their own food to that restaurant and eat it within the premises of that restaurant.

25. Respondents 3 and 4 have urged that they ought to be permitted to carry their own food because the cinema halls sell exorbitantly priced food and beverages, which are also not nutritious. The High Court was persuaded to issue the direction which has been noted earlier based on the consideration that what is offered for sale is "junk food". Theatre owners may decide the contents of the menu they offer, similar to restaurants deciding their menu or similar to theatre owners themselves deciding which movies to screen. As mentioned above, this is a commercial decision which the theatre owners are entitled to make. The price point at which the goods and services will be sold is likewise subject to being fixed by the movie theatre. Whether or not the cost of a good or service is affordable or exorbitant is unrelated to the conditions of entry enforced by a business.

26. The second level of argumentation in the judgment of the High Court is that the prohibition in question impinges upon the right to choice of food, the right not to eat "junk" food, and the right to good health. However, this line of reasoning fails to notice that movie goers are not compelled to buy food at the cinema hall. Whether or not to purchase food or beverages after gaining admission to the cinema hall is entirely within the choice of the movie goer. Viewers visit cinema halls for the purpose of entertainment. The transaction of purchasing a ticket permits them to view the movie they have opted to watch. If the food and beverages on sale at the movie hall are not

to their taste, they are free to refrain from purchasing them. In this way, they are not being prevented from exercising their right to choice of food. We also note that the right of movie goers to purchase or eat a dish of their choice is unfettered outside the confines of privately operated movie theatres (subject to safety and public welfare).

27. Whether or not to watch a movie is entirely within the choice of viewers. If viewers seek to enter a cinema hall, they must abide by the terms and conditions subject to which entry is granted. Having reserved the right of admission, it is open to theatre owners to determine whether food from outside the precincts of the cinema hall should be permitted to be carried inside.

28. We are therefore of the view that the High Court transgressed its jurisdiction under Article 226 of the Constitution by directing the cinema hall owners not to prohibit movie goers from carrying eatables and beverages from outside within the precincts of a cinema hall and by directing the state to enforce this direction to the cinema hall owners. Absent a statutory regulation which regulates the right to conduct the business of operating a cinema hall, the imposition of such a restraint would affect the legitimate rights of a theatre owner.

29. However, this is not to say that the terms and conditions imposed by cinema owners or other commercial entities bind the consumer or the customer in every case. As held by a catena of decisions of this Court, when one party has unequal bargaining power relative to the other party, any terms and conditions which are unreasonable may not be enforced as against the party with lower bargaining power.⁴ In **Central Inland Water Transport Corpn. v. Brojo Nath Ganguly**⁵, this Court held that whether parties can be said to have unequal bargaining power and whether a bargain is unfair or unreasonable must be decided on the facts and circumstances of each case:

“89. ... This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. ... It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. ... there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances.”

30. The test in **Central Inland Water Transport Corpn.** (supra) is not only to assess whether the parties have unequal bargaining power relative to one another but also to ascertain whether a contractual term or a contract is unfair, unreasonable or unconscionable. A contract (or a term in a contract) can be said to be unfair or unreasonable if it is one-sided or devoid of any commercial logic. In the present case, although theatre owners may unilaterally determine the conditions of entry into cinema hall, the condition imposed in this instance is not unfair, unreasonable or unconscionable.

⁴ Central Inland Water Transport Corporation v. Brojo Nath Ganguly, (1986) 3 SCC 156; IREO Grace Realtech (P) Ltd. v. Abhishek Khanna, (2021) 3 SCC 241; Jacob Punnen v. United India Insurance Co. Ltd., (2022) 3 SCC 655

⁵ (1986) 3 SCC 156

31. The condition of entry is imposed as a direct result of the exercise of the right of cinema owners to carry on a business or trade under Article 19(1)(g) of the Constitution. The commercial logic of prohibiting movie goers from carrying their own food to the cinema hall is to stimulate and boost a vital aspect of the business – the sale of food and beverages. 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. While movie goers may have no choice but to sign on the proverbial dotted line (and thereby not carry any food of their own into the theatre) in order to enter the cinema hall and watch a movie of their choice, this does not by itself render the condition of entry unfair, unreasonable or unconscionable.

32. Most businesses impose some or the other condition which the customer may find less than ideal. For instance, many private museums do not permit customers to take photographs of the objects on display. This is also true of many clothing boutiques or jewellery stores. Audience members are often banned from recording musical performances at concerts. Music festivals, much like movie theatres, do not permit attendees to carry their own food or beverages to the venue. Similar is the case with stand-up comedy shows or plays that are conducted in collaboration with eateries or bars. Although the customer is paying for a ticket to watch the music performance (or the standup act or the play, as the case may be), the essence of the business model is to provide a fillip to the revenue generated by another arm of the business. This being the case, movie goers are bound by the condition of entry determined by the theatre owners in the instant case i.e., the prohibition on carrying food and beverages from outside into the precincts of the movie hall.

33. We note that during the course of arguments, statements were made on behalf of the appellants that in order to obviate any inconvenience to movie goers, due arrangements are made for the supply of hygienic drinking water without levying any charge within the precincts of the cinema hall. Moreover, it has also been stated that when an infant or young child accompanies a parent, as a matter of practice, the cinema hall owners have no objection to a reasonable amount of food or beverages being carried inside the cinema hall to serve the nutritional requirements of the infant or child.

34. As for movie goers with chronic diseases who may have received dietary instructions from their doctors or who may otherwise be under dietary restrictions due to their medical condition, we request cinema hall owners to consider requests from such movie goers on a case-by-case basis.

35. In view of the above position, we allow the appeals and set aside the impugned judgment and order of the High Court dated 18 July 2018 in regard to direction (i) which has been referred to above. The remaining directions of the High Court do not form the subject matter of the appeals and are, therefore, not dealt with in the present judgment.

D. Parting remarks

36. Before concluding, it needs to be noticed that Rule 87 of the 1975 Rules is in the following terms:

“87. (i) The licensing authority shall ensure that the sale price of tickets in all the cinemas of the State holding licence under these rules in uniform.

(ii) The licensing authority shall ensure that reduced rates are charged by the licensee for any picture screened for the second time in any auditorium.”

37. The validity of Rule 87 was not in challenge before the High Court. The High Court in paragraph 8(iii) of its judgment issued the following directions in regard to sub-clauses (i) and (ii) of Rule 87:

“iii. The Government of J&K as well as Licensing Authority/every District Magistrate in the State is directed to ensure proper uniformity be maintained with respect to the sale price of tickets in all the cinemas of the State in terms of Rule 87(i) & (ii) of the Jammu & Kashmir Cinemas (Regulation) Rules, 1975.”

38. The above direction of the High Court shall not be construed as imposing any requirement over and above Rule 87 as it currently stands.

39. Pending applications, if any, stand disposed of.

TC (C) Nos 28 of 2019 and 29 of 2019

40. In view of the judgment delivered above in Civil Appeal No. 77 of 2023, the writ petitions transferred from the High Court of Delhi in TC (C) No 28 of 2019 and the Bombay High Court in TC (C) No 29 of 2019 are dismissed. The Transferred Cases are accordingly disposed of.

41. Pending applications, if any, stand disposed of.

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