

(1974) 02 GUJ CK 0008

In the Gujarat High Court

Case No : Special Civil Application No. 1766 of 1973

Amreli Vistar Kadava Patel Ghati Kelavani Prachar Mandal
Sanchalit Vidyarthi Ashram

APPELLANT

Vs

District Magistrate of Amreli and Others

RESPONDENT

Date of Decision : 18-02-1974

Acts Referred:

Bombay Cinemas (Regulation) Rules, 1954 — Rule 6
Constitution of India, 1950 — Article 226

Citation : AIR 1976 Guj 13 : (1975) 1 GLR 411

Hon'ble Judges : S.H. Sheth, J;J.B. Mehta, J

Bench : Division Bench

Advocate : P.K. Parekh, for the Appellant; J.R. Nanavati, Asst. Govt. Pleader, R.P. Bhatt, of Bhaishanker Kanga, Girdharlal, Addl. Govt. Pleader and S.B. Vakil, for the Respondent

Judgement

S.H. Sheth, J.—The respondents Nos. 2 to 4 applied on 4th November, 1972, to the District Magistrate, Amreli for a no-objection certificate under the Bombay Cinema Rules. 1954 in order to enable them to construct a permanent cinema theatre on plots Nos. 6, 7 and 8 of S. No. 2770, 2771 and 2772 of Amreli town. Public notice of that application was issued by the District Magistrate. The petitioner runs a Students' Home on neighbouring plots Nos. 11, 12 and 13. It houses about 60 to 70 students. He, therefore, objected to this proposal and lodged written objections with the District Magistrate on 29th November, 1972. The distance between the proposed site for the cinema theatre and the Students' Home is about 20 feet. In fact only 20 ft wide road runs between them. The petitioner was not heard in the matter. On 10th April, 1973, the District Magistrate granted to the respondents Nos. 2 to 4 the no objection Certificate. Fifty four students also objected to this proposal. The petitioner challenged the order granting the No-objection Certificate in a revision application which he filed before the State Government in June, 1973. The State Government dismissed it on 3rd November 1973.

The petitioner has thereupon filed this petition.

2. Mr. Parekh, appearing for the petitioner, has raised before us the following contentions :-

1. The District Magistrate did not give the petitioner any opportunity of being heard before he granted the No objection Certificate to the respondents Nos. 2 to 4. Therefore, the No-objection Certificate has been granted in violation of the principles of natural justice. It is, therefore, void and liable to be quashed.

2. The impugned order is bad and void because it gives no reasons for rejecting the objections lodged by the petitioner.

3. Since the local authorities were not consulted before the District Magistrate made the impugned order it has been made in violation of Rule 3 (4) of the Bombay Cinema Rules.

4. The District Magistrate has made the impugned order without considering the factors which are required to be taken into account under Rule 3 (3).

5. The order made by the State Government in Revision Application is bad because the conditions imposed by it are contrary to the Development Plan of Amreli.

3. So far as the first contention raised by Mr. Parekh is concerned, the question whether the petitioner is entitled to be heard in support of his objections depends upon the nature of the functions which the District Magistrate performs and the nature of the order which he makes. It has been contended by Mr. Parekh that the order which the District Magistrate makes is a quasi-judicial order. On the other hand, it has been contended by Mr. Vakil that it is an administrative order which does not attract the right of hearing.

4. Mr. Parekh has placed reliance upon the decision of the Supreme Court in State of Gujarat Vs. Krishna Cinema and Others, . It was a case under the Bombay Cinema Rules, 1954. It has been laid down by the Supreme Court in that decision that the power to issue, revoke or suspend a licence conferred upon the District Magistrate is exercisable on the satisfaction of that officer as to certain objective conditions and is plainly quasi-judicial. It has been further observed by the Supreme Court in that decision that the Bombay Cinemas (Regulation) Act, 1953 does not confer upon the licensing authority or the State Government arbitrary authority. It was a case in which the District Magistrate had refused to grant a No-objection Certificate. It may be noted that u/s 8-A of the Act right has been conferred upon any Person aggrieved by an order of a licensing authority refusing to grant a licence or revoking or suspending any licence u/s 8 to appeal against it to the State Government.

5. Mr. Vakil has argued before us that though an order refusing to grant a licence is a quasi-judicial act, as laid down by the Supreme Court in the aforesaid decision, an order rejecting the objections filed by a member of the public to the

grant of a No-objection Certificate is not a quasi-judicial order. According to him, it is a purely administrative act because at no stage there is any lis between an applicant for No- objection certificate and an objector. He has invited our attention to Rules 3 to 6 of the Bombay Cinema Rules, 1954 in order to convince us that the objections are invited from the members of the public only in public interest. The District Magistrate functioning under the Rules has indeed a duty to collect from the members of the public information in discharge of his public duty. It is difficult to say that in a matter of this type there is any lis at any stage between an applicant for a No objection Certificate and an objector. In our opinion, therefore, the order which the District Magistrate makes rejecting the objections received from the members of the public is an administrative order as distinguished from an order refusing to grant a No-objection Certificate to the applicant therefor. We take this view because what the Rules require the District Magistrate to do is to inform the members of the public of a proposal to construct a permanent cinema theatre, to receive from them such information which they give him in order to decide upon the suitability or otherwise of a cinema theatre being constructed on a particular site. In such a situation there is hardly any scope for a public objector to agitate before the District Magistrate his individual or Personal rights. It is on account of these reasons that we say that it creates no lis between an applicant for a No-objection Certificate and a public objector and that the order which the District Magistrate makes rejecting the objections received from a public objector is an administrative order.

6. The next question which has been canvassed before us is this: What are the considerations which should prevail with the District Magistrate before he makes such an administrative order? It is well-settled that an administrative order should be made fairly, impartially and reasonably. In the case of *The Keshav Mills Co. Ltd. and Another Vs. Union of India (UOI) and Others*, the Supreme Court has considered the question relating to the application of the principles of natural justice by administrative authorities. The principle which has been laid down is that such an order must be made in good faith and in fairness to the parties concerned.

7. In *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, it has been laid down that the purpose of the rules of natural justice is to prevent miscarriage of justice and that there is no reason why those rules should be made inapplicable to administrative enquiries. Arriving at a just decision is the aim of both quasi judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far-reaching effects than a decision in a quasi-judicial enquiry. Which particular rule of natural justice will apply to a given case depends to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice has been contravened the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. While

considering the validity of administrative actions all that the Court has to see is whether the ultimate decision is just or not.

8. In *R. v. Gaming Board for Great Britain, ex parte Benaim* (1970) 2 All ER 528 it has been laid down by the Court of Appeal that even the administrative or executive bodies are bound to observe the rules of natural justice. However, everything depends upon the subject-matter. The view that the principles of natural justice apply only to judicial proceedings and not to administrative proceedings has since long been exploded, It has relied upon a passage from *Re H. K. (an infant)* (1967) 1 All ER 226 at p. 231 in which the principle laid down by Lord Parker, C. J. is as follows:-

".....even if an immigration officer is not acting in a judicial or quasi judicial capacity, he must at any rate give the immigrant an opportunity of satisfying him of the matters in the sub-section, and for that purpose let the immigrant know what his immediate impression is so that the immigrant can disabuse him. That is not, as I see it, a question of acting or being required to act judicially, but of being required to act fairly.

Therefore, the principle which has been settled by the aforesaid decisions is that though a person who makes a grievance may not have a right to be heard in the matter of an administrative order, the order has got to be made fairly and justly and the officer or the body which makes such an administrative order has a duty to act fairly.

9. Mr. Vakil, appearing for the respondents Nos. 2 to 4 has raised the question whether there was any Public duty for the District Magistrate or the licensing authority and whether he owed it to the petitioner. The Bombay Cinema Rules, 1954 require the licensing authority to invite objections from the members of the public to the site for a proposed cinema theatre. Therefore, the members of the public have a right to point out to the licensing authority the factors which may militate against such a construction. The licensing authority is bound to take them into account because he cannot issue a No-objection Certificate in respect of a cinema theatre the situation of which will harm or injure public interests. In other words, suitability of its situation in the context of public interests is the prime factor which the licensing authority is bound to take into account. He is under an obligation to refuse to grant a No-objection Certificate where the facts placed before him by the members of the public show that the proposed theatre should not be constructed at a particular Place. Therefore, there is no doubt in our mind that the District Magistrate owes a public duty and he must discharge it fairly and justly in public interests. It is true that if any Private rights of the Petitioner are violated, he can sue the respondents Nos. 2 to 4 in the Civil Court. Though the petitioner in the instant case has no particular private right to enforce against the respondents Nos. 2 to 4, the licensing authority in our opinion, is bound to hear him particularly when he finds substance in the objections raised by the petitioner and subjects the respondents Nos. 2 to 4 to terms in order to meet those objections. When objections of a substantial

character have been raised and when the licensing authority has been led on account of those objections to subjecting the respondents Nos. 2 to 4 to terms, the licensing authority has got to deal with the situation fairly and justice and he cannot do so unless he hears the petitioner and finds out from him whether the conditions to which he subjects the respondents Nos. 2 to 4 will meet the objections raised by the Petitioner.

10. We now turn to a few relevant facts. Mr. Nanavaty has produced before us the file of the licensing authority in this case we have perused it. We find that after having taken into account the objections which the petitioner and other persons had raised to the site for the proposed theatre the licensing authority tentatively came to the conclusion that a No-objection Certificate should not be granted to the respondents Nos. 2 to 4. It, therefore issued to the said respondents a notice dated 14th March, 1973, calling upon them to show cause, if they had any why No-objection Certificate should not be refused on account of five reasons specified therein. The first reason was that the site for the proposed theatre is situate in a residential zone of Amreli municipal area. The second reason was that students' homes are situate very near the site for the proposed theatre. The third reason was that secondary schools are situate in the area surrounding the site for the Proposed theatre. The fourth reason was that police head-quarter ground is situate just opposite the site for the Proposed theatre. The fifth reason was that the site for the proposed theatre is situate on Chital road leading from Amreli to Rajkot and that, there fore, the situation of a cinema theatre would create traffic problems. On 20th March, 1973 the respondents Nos. 2 to 4 replied to that show cause notice and tried to meet the grounds which the licensing authority had stated on the basis of which a No-objection Certificate was Proposed to be refused. Thereafter, on 29th March, 1973 the District Magistrate made his order directing the grant of a No-objection Certificate to the respondents Nos. 2 to 4. That order shows that he had inspected the site of the proposed cinema theatre before making that order. It is not necessary to reproduce the entire order in this judgment. Suffice it to say that the said order shows that the respondents Nos. 2 to 4 were subjected to certain conditions and that a No-obligation Certificate was ordered to be issued on the condition that they would under take to comply with the conditions which the licensing authority had specified in the said order dated 29th March, 1973. The notice dated 14th March, 1973, from the licensing authority to the respondents Nos. 2 to 4 and the order made by the licensing authority on 29th March 1973, show that the objections which the petitioner, amongst others, had raised in public interest had some substance. If he found substance in the objections raise amongst others by the petitioner, he ought to have called upon the petitioner to state whether the conditions to which proposed to subject the respondents Nos. 2 to 4 would meet his objections. Unless he did so, he could not be said to hair discharged his public duty fairly, though the licensing authority owes a public duty in the matter, he cannot arrogate unto himself an assumption that whatever he will do, unaided by anyone, will be in public interest. He has got to decide the

matters on objective facts with the aid of those who have raised objections to the proposal. This is, in our opinion, the minimum which the licensing authority ought to have done. He did not do so. However, the situation in the instant case is worse because on 28th April, 1973, the Petitioner wrote a letter to the licensing authority in which he reminded the licensing authority of the objections which he had lodged lest the licensing authority should overlook them. By that letter the petitioner requested the licensing authority to hear him before granting a No-objection Certificate to the respondents Nos. 2 to 4 and to inform him whether he had stated any reasons in support of his order directing the issue of a No-objection Certificate to the respondents Nos. 2 to 4. The licensing authority replied to that letter on 3rd May, 1973. All that has been stated in that letter is that after having considered the objections lodged by the petitioner a No-objection Certificate was ordered to be issued to the respondents Nos. 2 to 4 and that he had taken into account the fact that the proposed theatre should not cause any interference or disturbance to the Students' Home run by the petitioner. The licensing authority in that letter does not state anything about the Petitioner having been heard by him before he made the said order dated 29th March, 1973, nor does he state that he had made a reasoned order in that behalf even though the petitioner had made a specific enquiry in that respect.

11. The statutory duty cast upon the licensing authority to invite public objections is not a matter of empty formality nor is it a matter to be dealt with light-mindedly. It is a matter of substance. The substance lies in safeguarding public interests fully. In order to fully safeguard the public interests, it should have heard the petitioner, particularly when the petitioner wanted to be heard in the matter and should have informed the petitioner, particularly when the petitioner had made a specific enquiry in that behalf that he had made a reasoned order in the matter. Mr. Vakil has, however, tried to argue that the respondents Nos. 2 to 4 have a fundamental right to deal with their property in any manner they like and to carry on their business and that the petitioner cannot interfere with or object to it. Enjoyment of their property by the respondents Nos. 2 to 4 and their carrying on business in their property are matters which are subject to public interests. That is exactly what the Bombay Cinema Rules, 1954, provide for and that is exactly what we believe the licensing authority should have done.

12. Rule made absolute.