
(2001) 07 PAT CK 0034
In the Patna High Court
Case No : C.W.J.C. No. 7761 of 2001

Baban Sharma

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 05-07-2001

Acts Referred:

Citation : (2001) 07 PAT CK 0034

Final Decision : Dismissed

Judgement

Shiva Kirti Singh, J.—Heard the parties.

2. Petitioner has challenged an interim order passed by Minister, Urban Development, Government of Bihar as communicated by letter dated 17.5.2001, contained in annexure-1 on the ground that the Minister cannot exercise the power of the State Government to hear appeal against order of a District Magistrate refusing to renew a licence under, the provisions of Bihar Cinemas (Regulation) Act, 1954 and further even the State Government, according to learned Counsel for the Petitioner will not have any power to hear appeal in view of Rule 9 of Bihar Cinemas (Regulation) Rules, 1974.

3. Since only an interim order has been passed by the Minister of the concerned department hence there is no occasion to consider the case of the Petitioner or of the licence holder on merits. However, the question raised on behalf of Petitioner relating to jurisdiction needs to be decided at this very stage. A perusal of Sub-section (3) of Section 5 of the Act leaves no doubt that any person aggrieved by decision of a licensing authority refusing to grant a licence under the Act may appeal to the State Government or to such officers as the State Government may specify. The rule making power as contained in Section 9 of the Act mentions that rules may be framed to provide for "delegation" of power of hearing appeals under Sub-section (3) of Section 5 and Sub-section (8) to any officer subordinate to the State Government. It is clear from joint reading of rule making provision and Sub-section (3) of Section 5 that the State Government has the jurisdiction and power to hear appeals and it has also the power to delegate such a power

through rules. It is well established in law that even after delegating power to a subordinate the delegating authority is not deprived of his original powers. Hence in the opinion of this Court the State Government has the power to hear appeals and such power as per Rules of Executive Business can be exercised by proper authority which in this case is the Minister of the concerned department. Hence this Court finds no merit in this writ application and the same is accordingly dismissed.

4. Before parting with the order it is relevant to consider a judgment of the Apex Court in the case of A.K. Bhatnagar and Others Vs. Union of India (UOI) and Others, upon which learned Counsel for the Petitioner has placed strong reliance. That judgment was concerned with service matter and rule under consideration in paragraph-13 was a rule, framed in exercise of power conferred under the proviso to Article 309 of the Constitution of India. In the present case the said judgment is of no help to the Petitioner because here the interpretation given upon the rule by learned Counsel for the Petitioner shall make the rule inconsistent with provisions under the Act. Hence such interpretation cannot be accepted. Learned Counsel has also cited some other judgments which are on same lines and hence irrelevant for deciding the issue in question.