

(1968) 11 CAL CK 0014
In the Calcutta High Court
Case No : Civil Rule No. 1433 (W) of 1964

Bhabataran Paul

APPELLANT

Vs

Bhamini Ranjan Chatterjee

RESPONDENT

Date of Decision : 14-11-1968

Acts Referred:

Constitution of India, 1950 — Article 226
West Bengal Cinemas (Regulation of Public Exhibition) Rules, 1956 — Rule 20, 27, 4, 4(1), 4(2)
West Bengal Cinemas (Regulation) Act, 1954 — Section 5, 5(1), 5(4), 9

Citation : (1969) 2 ILR (Cal) 493

Hon'ble Judges : Basu, J

Bench : Single Bench

Advocate : Nirmal Chandra Chowdhury and Ganganarayan Mukherjee, for the Appellant; Balai Chandra Roy and C.L. Ganguly, for the Respondent

Judgement

D. Basu, J.—This case raises a question of law, viz., whether an order refusing to grant extension of time for completing the construction of a building intended for a cinema house, passed under Sub-rule (5) of Rule 4 of the West Bengal Cinema (Regulation of Public Exhibition) Rules, 1956, is appealable under the provisions of Section 5(4)(a) of the West Bengal Cinemas (Regulation) Act, 1954. If the answer to this question be in the negative as the Petitioner contends, then the impugned order of the Commissioner at annEx. D at p. 18 of the petition would be without jurisdiction.

2. The facts leading to that order shortly are that the Respondent No. 1 made an application for construction of a permanent cinema house at Galsi sometime in the year 1962, which was allowed by the District Magistrate on October 1, 1963. According to the Rules the Respondent was to complete the construction of the cinema house within six months, viz. by March 31, 1964, and if he failed to do that according to the Rules the permission so granted would lapse. Before, however, the statutory period elapsed the Respondent No. 1 made a further application in terms of Sub-rule (5) of Rule 4 for an extension of the period of

time within which he could complete the construction. In the meantime, sometime in February, 1964, the Petitioner, who was holding a temporary cinema house, made an application to the District Magistrate for the grant of a permanent cinema licence.

3. The Respondent No. 1's application for extension of time was, however, rejected by the District Magistrate, holding that there was no sufficient reason for granting an extension, by an order which is annEx. B to the petition. It is against that order that the Respondent No. 1 preferred his appeal to the Commissioner u/s 5(4)(a) of the Act, which is the only provision relating to the right of appeal. The Commissioner overruled the objection that no appeal lay against the order and, coming to the merits reversed the Collector's order and granted extension of time for six months to complete the construction of the cinema house with effect from October 1, 1964.

4. Before answering the question whether there was a right of appeal against the said order of the District Magistrate it is necessary to advert to the provisions in Section 5(4)(a) which is as follows:

Any person aggrieved by an order of a licensing authority granting or refusing to grant a licence or by the terms and conditions on which or the restrictions subject to which a licence is granted, may, within such time as may be prescribed, appeal.

Prima facie, an order under Sub-rule (5) of Rule 4 refusing to grant an extension of time does not come within the purview of Section 5(4)(a) as reproduced above. But the Commissioner has held agreeing with the contention advanced, on behalf of the Respondent No. 1, before me that the order refusing to grant extension of time for completion of the cinema house amounts in law to an order refusing to grant a licence. It has been rightly contended on behalf of the Petitioner that a right of appeal is a creature of the Statute and there is no inherent right of appeal nor can the Court create a right of appeal by inference, merely because the absence of appeal might cause hardship to the parties. The reason is that every order of an original nature need not necessarily be appealable and the Legislature may well indicate that in certain matters an order passed by the inferior authority should be final in order to give a quietus to a litigation and to put a stop to uncertainty. In the instant case, the question whether an appeal lay against an order passed under Sub-rule (5) of Rule 4 has, in fact, arisen because of peculiar nature of the Rules which have been made in the Act in exercise of the powers conferred by Section 9 of the Act. I have had an occasion to make observations as to some of these Rules being ultra vires the Act or at least dealing with matters which were not contemplated by the Act, in the case of *Purbachal Cinema v. State of West Bengal* C.R. 81 (W) 1967: ILR (1969) Cal. 278 disposed of on July 17, 1968. I have to repeat that view in the instant case inasmuch as the Act in Section 5 contemplates that there should be an application made for the grant of a licence for holding of cinematograph exhibition and the provision of Sub-section (1) of Section 5 suggests that the

person intending to apply for licence complete his construction complying with the requirements prescribed in the Rules for the safety of persons attending exhibitions therein. If his construction complies with such rules and the licensing authority is satisfied that his application is in order, it is for the licensing authority to grant the licence and in the absence of such compliance the licence would have been refused. It is from such an order that an appeal has been preferred by Sub-section (4)(a) of Section 5. What the law making authority did in making the rule was to elaborate the statutory procedure by imposing a preliminary stage of asking for permission to build which again would go through different stages until the cinema house is constructed and the stage of granting a licence after considering the candidate's case is reached only in Sub-rule (5) of Rule 4. All that is contained in Sub-rules (1) to (5) of Rule 4 seems to have been devised by the law making authority and that is why, these not having been contemplated by the Legislature, no reference of any such order upto Sub-rule (5) of Rule 4 finds any mention in the Act. It is, therefore, difficult to say that the granting or refusing to grant extension of time under Sub-rule (5) of Rule 4, simply for the construction of a cinema house, should also be considered to be amounting to an order "refusing to grant licence" within the meaning of Section 5(4)(a). In this context, I might refer to another anomaly which had been caused by the rule making authority going beyond powers conferred by the Act itself. In Rule 27, it has been provided that there may be an appeal not only u/s 5(4) but also against an order of suspension or revocation passed under Rule 20. When this Rule 27 was made, it was patently ultra vires inasmuch as there was no mention of an order of revocation or suspension, in Section 5(4)(a) of the Act which was the sole provision in the Act conferring the substantive power of appeal. Confronted with these difficulties, it was in 1965 that the Legislature had to amend Section 5(4)(a) itself by including within the list of appealable orders any order which had been made appealable by the Rules themselves; but even then it may be pointed out that any order in Sub-rule (5) of Rule 4 has not been specifically made appealable by the Rules as yet.

5. Be that as it may, the said amendment of the Act does not apply to the case before me. The reasoning of the Commissioner, viz., that the order refusing extension of time to construct virtually amounts to refusal of a licence which cannot also be accepted on a plain interpretation of the Act and the Rules. The Rules make a clear distinction between the permission to build, which expression is used in Sub-rules (4) and (5) and a licence for holding a permanent cinema which is used in Sub-rule of Rule 4 and Rule 5, 6, 7 and 7a. Then again the proviso to Section 5(1) says:

Provided that the licensing authority shall, before refusing to grant a licence under this Act, give the applicant an opportunity of showing cause.

In other words, before refusing or rejecting an application for a licence the applicant must be given an opportunity of showing the cause. But in Sub-rule (4) of Rule 4, if the building is not completed within the given period, the permission

to construct shall lapse. In other words, there is a termination of the permission by the operation of the Statute and by efflux of time. If an order refusing to extend time were treated as refusal to grant a licence then there could not have been any statutory lapsing of the permission but that the licensing authority would have been obliged to give the applicant an opportunity of showing cause before terminating such permission. Whatever might have been the case as to the granting or refusing to grant the permission to build so far as the matter of extension of time is concerned it is sufficiently clear that this order cannot reasonably be contended to amount to an order refusing to grant the licence inasmuch as it is in the nature of a discretionary power to grant an adjournment superadded to the statutory lapse of permission by efflux of time.

6. Above all, as I have stated at the beginning, the consideration whether the application for licence should be granted or refused does not reach, according to the Act, so long as the completed building has not been made by the applicant and that building conforms to the requirements of the Rule.

7. On behalf of the Respondents much reliance was placed on the language used by the Collector in his order. He not only held that there was no sufficient reason for granting the extension which could be given only where the failure of the applicant was due to circumstances beyond his control but added, "the permission accorded to him for construction of permanent cinema house at Galsi is hereby revoked." These words, in fact, were redundant inasmuch as the permission would expire by the efflux of time by the operation of Sub-rule (4) of Rule 4. The further contention on behalf of the Respondent No. 1 that this constituted revocation of licence has no force inasmuch as no licence had in fact been granted to Respondent No. 1.

8. Considering all the aspects of the matter I have little doubt that the order of the District Magistrate refusing to extend time to complete the construction under Rule 4(5) was not an appealable order u/s 5(4)(a) of the Act and that accordingly the Commissioner had no jurisdiction to entertain the appeal and his order passed therein would therefore be a nullity. It was, however, contended by the learned Advocate for the Respondent that the Petitioner was not entitled to move this application inasmuch as he had not yet completed any building for holding a permanent cinema. I am not agreeable to accept this contention inasmuch as in a case of patent absence of jurisdiction even a stranger is allowed to apply for certiorari because the Court has got some responsibility for checking maladministration of justice. In the instant case, the Petitioner was running a temporary cinema house and he has also made an application for holding a permanent cinema which is still pending. In these circumstances, it cannot be said that the Petitioner is altogether a disinterested person who should not be heard under Article 226 of the Constitution. In view of my findings above this Rule is made absolute and the impugned order of the Commissioner at annEx. D is quashed.

9. There will be no order as to costs.