

(1955) 10 AHC CK 0022
In the Allahabad High Court
Case No : Special Appeal No. 204 of 1954

Bharat Bhushan

APPELLANT

Vs

Cinema and City Magistrate and Another

RESPONDENT

Date of Decision : 05-10-1955

Acts Referred:

Cinematograph Act, 1918 — Section 4, 5(3)

Citation : AIR 1956 All 99

Hon'ble Judges : V. Bhargava, J; Agarwala, J

Bench : Division Bench

Advocate : S.C. Khare, for the Appellant; N.P. Asthana, for the Respondent

Final Decision : Dismissed

Judgement

Agarwala, J.—This is a special appeal against a judgment of a learned single Judge of this Court dismissing a writ petition. The dispute is about the licence to run a Cinema. A cinema house is owned by the appellant Sri Bharat Bhushan and three other persons namely, Bharat Bhushan's father Sri Manna Lal, his brother Dip Chand and mother Srimati Munga Devi.

The cinema house was let out to a person by the name of Sri R. M. Modi of Bombay for a period of five years and then after the death of R. M. Modi the cinema was leased for a period of three years to Sri K. M. Modi, the brother of Sri R. M. Modi. The term of lease expired on 31-5-1950. There was no renewal of the lease but Sri K. M. Modi has continued to be in possession of the premises.

A civil suit for the ejectment of Sri K. M. Modi (hereinafter referred to as Modi) was filed by two of the proprietors, the appellant and his mother Srimati Munga Devi. That suit is still pending. Two applications were made for the grant of a license to run the cinema, one by the proprietors and the other by Modi. The District Magistrate, however, declined to issue the license in favour of any party on the ground that till the civil suit is decided, no licence should be granted.

Modi made a representation to the State Government and the State Government

directed the issue of a license in favour of Modi by its order dated 31-10-1953. Thereupon an order for the issue of a license in favour of Modi was made by Sri P. C. Saxena the Cinema Magistrate and it was signed by the District Magistrate. In pursuance of this order a license was issued which appears to have been signed only by the Cinema Magistrate and not by the District Magistrate.

2. On these facts, the appellant, as one of the Proprietors of the Cinema House, moved this Court under Article 226 of the Constitution alleging that the State Government had no jurisdiction to interfere with the exercise of the discretion by the District Magistrate in an individual case and that all that it could do was to regulate the exercise of his jurisdiction by general orders. He based his contention upon the language of Section 5(3), Cinematograph Act (2 of 1918), which runs as follows:

"Subject to the foregoing provisions of this section, and to the control of the State Government, the licensing authority may grant licenses under this Act to such persons as it thinks fit, and on such terms and conditions and subject to such restrictions as it may determine".

3. It was also alleged that the appellant was given no opportunity of placing his case before the State Government and that therefore the order directing the issue of the license to Modi was illegal, and lastly it was alleged that the District Magistrate not having signed the actual license it had no validity in the eye of law. On these allegations the appellant prayed for the following relief:

That a writ of certiorari be issued calling for the record of the case and quashing the order passed on or about 23-10-1953 by the Cinema Magistrate for the issue of a license to Modi.

4. On behalf of Modi, the facts were admitted but it was alleged that the order of the State Government was perfectly justified under the provisions of Section 5(3); Cinematograph Act, that no opportunity was required by the Act to be given to the appellant by the State Government that the absence of the signature on the licence by the District Magistrate was merely an irregularity and that the signature of Sri P. C. Saxena, Cinema Magistrate, was quite enough.

5. The learned Single Judge refected the pleas raised by the appellant and dismissed the writ petition. Against that order this special appeal has been filed and the very three same points which were urged before the learned Single Judge have been raised before us.

6. Having heard learned counsel for the parties we have come to the conclusion that there is no force in this appeal,

7. u/s 5(3), Cinematograph Act the licensing authority, namely the District Magistrate, is vested with the power and discretion to grant licenses to such persons as he thinks fit, and on such terms and conditions and subject to such restrictions as he may determine. This discretion is, however, subject to two things, (1) the other provisions of Section 5--we are not concerned with them in

the present appeal -- and (2) the control of the State Government.

8. Learned counsel's contention is that the word "control" signifies merely the general regulations which may be issued to control the exercise by the District Magistrate of his discretion under the section and that the State Government has no power to substitute its own discretion in place of the discretion exercised by the District Magistrate or to prevent him from exercising his discretion at all.

9. The word "control" has not been defined in the Act. The dictionary meaning of the word is regulation, direction, restraint, reservation (Webster's Dictionary), the fact of controlling, or of checking and directing action; Domination, Command, Sway (Shorter Oxford Dictionary). The word "control" as a verb has been explained as "to exercise restraint or direction upon the free action of; to dominate, command".

10. It appears to us that having regard to the dictionary meaning, the word "control" is not confined to mere regulation. It is more comprehensive and includes domination or command over an inferior. No doubt the State Government can lay down general rules or instructions for the guidance of the District Magistrate in the exercise of his discretion.

But the "control" envisaged in the section is not confined to the issuing of mere general directions; it includes an interference on the part of the State Government with the individual decision of a particular case by the District Magistrate. As pointed out above, the State Government interfered only when the District Magistrate refused to grant the license to any of the parties.

Obviously the State Government considered that the Cinema business should continue and the license should be granted to some one and it further considered that the license should be granted to the man who was already in possession of the Cinema building. We are not here considering a case in which before the District Magistrate could exercise his discretion under the section, the State Government arbitrarily directed the District Magistrate to grant the license to a particular individual.

We express no opinion whether in such a case the State Government's action will be justified under the section. We are here concerned with the exercise of a power by the State Government after the District Magistrate had himself exercised his discretion. We are quite clear in our minds that Section 5(3) gives to the State Government such a power as was exercised in the present case.

11. The contention that the order of the State Government is bad because no opportunity was given to the appellant of placing his case before it is not warranted by the provisions of the Act or by any other rule of law. The Act does not bind the State Government to issue notice to the parties before it exercises its control. The directions issued by the State Government are neither judicial nor quasi-judicial.

They are purely administrative directions and unless the Statute required that it

should exercise those powers after giving notice to the parties concerned we cannot hold that the action of the State Government was illegal or unauthorised.

12. The third contention that the license actually issued did not bear the signature of the District Magistrate is, in our opinion, immaterial when, once it has been held that the refusal of the Magistrate or the State Government to issue the license in favour of the appellant could not be questioned.

If there is an irregularity in the issuing of the license that can be cured at any time by the District Magistrate appending his signature thereto. In any event, since it has been found that the appellant has no right to obtain the license in his favour, it is not for him to question whether the license actually issued to the respondent is valid or invalid.

13. There is no force in this appeal and we dismiss it with costs to respondent Modi.