

(1954) 10 AHC CK 0015
In the Allahabad High Court
Case No : Misc. Writ No. 1020 of 1953

Bharat Bhushan

APPELLANT

Vs

P.C. Saxena and Another

RESPONDENT

Date of Decision : 20-10-1954

Acts Referred:

Cinematograph Act, 1918 — Section 5, 5(3), 6
Cinematograph Act, 1952 — Section 1(2), 18
Constitution of India, 1950 — Article 226

Citation : AIR 1955 All 82

Hon'ble Judges : M.L. Chaturvedi, J

Bench : Single Bench

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

Final Decision : Dismissed

Judgement

M.L. Chaturvedi, J.—This is a petition under Article 226 of the Constitution. The petitioner is one out of the four proprietors of a building known as Minarwa Cinema situate near Motor Stand in the Town of Jhansi. This house appears to have been constructed in the year 1942 and a lease was executed in favour of one Sri R. M. Modi of Bombay in the same year for a period of five years at a monthly rental of Rs. 450/- with an option that the lessee could renew the lease for another period of three years, but he would have to pay rent for the subsequent period at the rate of Rs. 550/- a month.

Sri R. M. Modi died in the year 1946 and the four proprietors of the cinema building executed another lease in favour of Sri K. M. Modi, the brother of the deceased, and in this lease it was made clear that the lease would continue for eight years. The period of eight years expired on 31-5-1950. But it appears that Sri K. M. Modi continued to exhibit the cinema shows in this building till 30-4-1952. It has been stated in the counter affidavit that the rent for the period after 31-5-1950 was paid at the rate of Rs. 1000/-per month till 30-4-1952, and

this assertion has not been controverted in the re-joinder affidavit filed by the petitioner.

There is considerable dispute between the parties as to what happened after 30-4-1950 and the attempt of the petitioner is to show that the respondent No. 2 (Sri K. M. Modi) had no right to continue in possession of the cinema building whereas in the counter affidavit facts have been asserted to make out the right of the said respondent to continue in its possession.

I shall not enter into the controversy with respect to these facts, as I do not propose to decide in these proceedings whether the respondent No. 2 is entitled to continue in possession of the building or not. The question is the subject matter of a civil suit pending in the court of the District Judge at Jhansi, and any observation that I may make in this respect may prejudice one or the other of the parties in the proceedings before that court. If the position were clear that the respondent No. 2 had no right to remain in possession that i"act would have been taken into consideration in deciding this petition; but that is, on the facts disclosed, not the position.

It appears that there was a compromise between the parties in proceedings u/s 145, Criminal P. C. The proceedings u/s 145, Criminal P. C., were started on the application made by one Sri B. M. Shah on behalf of the respondent No. 2 on 13-5-1952. The building was ordered to be attached on the 23rd of May. On 26-5-1952 an application was made on behalf of the four proprietors of the cinema building for dropping the proceedings u/s 145, Criminal P. C., in view of the pendency of the civil suit, and also for making all the proprietors of the cinema building parties to the proceedings u/s 145, Criminal P. C. This application was rejected by the learned Magistrate.

On 4-7-1952 a compromise was filed in these proceedings which was signed by Sri B. M. Shah on behalf of the respondent No. 2 and two out of the four proprietors of the cinema building, namely Sri Mannu Lal and Sri Dip Chand; and, according to the terms of the compromise, possession of the cinema building was to be delivered to Sri B. M. Shah as the representative of the respondent No. 2. On the strength of the said compromise, possession of the cinema building was delivered to Sri B. M. Shall on 9-7-1952.

Coming to the civil suit, what appears to have happened was that an application was made there for dismissing the suit on the ground of the compromise dated 4-7-1952, but Sri Bharat Bhushan and Smt. Monga Devi, the two proprietors who had not signed the compromise opposed this application. Sri Mannu Lal and Sri Dip Chand also subsequently wanted to back out of it. The District Judge then seized of the case passed an order on 22-8-1953 holding that Mannu Lal and Dip Chand must be held to have compromised the matter but Bharat Bhushan, (the petitioner) and Smt. Monga Devi could continue the suit. Bharat Bhushan, the petitioner and Dip Chand are the sons of Mannu Lal and Monga Devi is their mother. The position, therefore, is that the father and one son have been held to

have compromised the matter but the other son and the mother are proceeding with the civil suit.

2. It appears that there were no cinema shows exhibited in this building between the period 1st of May and 21-11-1953. The licence to the respondent No. 2 to run the cinema was granted by an order dated 23-10-1953 but the cinema shows could not be exhibited till 21-11-1953 because of the continuance of the injunction order issued by the learned District Judge of Jhansi restraining the said respondent from doing so. This injunction was discharged on 21-11-1953.

3. The proceedings for the grant of a licence started on an application made on behalf of the respondent No. 2 for granting to him a licence to run the cinema house, and it appears that Dip Chand also filed an application for a licence for the same. The learned District Magistrate issued notice to the opposite parties to appear before the Cinema Magistrate on 11-12-1952 who heard the parties and submitted his report to the District Magistrate. On 25-2-1953 the District Magistrate passed an order saying that the dispute concerning the alleged lease was "sub judice" in a civil court, and, under the circumstances, he could not make any order allowing or disallowing either of the applications made by the parties. The applications were ordered to be filed without any orders with a direction that it would be open to the applicants to revive them after the civil suit was over.

It appears from the facts stated in the counter affidavit that a representation was made to the Government on behalf of respondent No. 2 praying that a licence to exhibit the cinema shows be granted to the said respondent. The Government issued instructions to the District Magistrate directing him to grant the licence to the respondent No. 2 because the said respondent had been restored to the possession of the cinema house. In obedience to the instructions received from the Government a licence was ordered to be issued in favour of respondent No. 2. This order was passed on 31-10-1953, but there is a considerable dispute as to whether it was signed at that time by the District Magistrate or he appended his signatures to it on some subsequent date. I do not propose to enter into this controversy either, because of the view that I have taken on another point in this case which I shall presently state. To continue the story a licence was subsequently issued in favour of the respondent No. 2 and it is signed by the Cinema Magistrate for the District Magistrate.

4. On the facts stated above, the learned counsel for the petitioner has urged three points in support of his petition. His first submission is that the licence could have been granted only by the licencing authority which in this case was the District Magistrate of Jhansi and the State Government had no authority to issue any directions for the grant of a licence to a particular individual. The learned counsel has referred me to Section 4 which shows that the authority having power to grant licence under this Act shall be the District Magistrate provided that the State Government may by notification in the official gazette constitute such other authority as it may specify in the notification to be the

licencing authority for the purposes of this act.

It is nobody's case that any other person has been appointed by the State Government as the licencing authority. I have, therefore, no hesitation in holding that the licencing authority in the present case was the District Magistrate of Jhansi. The learned counsel for respondent No. 2 relies on Section 5 Sub-section (3) of the same Act (Cinematograph Act (2 of 1918)). This Sub-section reads 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."

The power to the licensing authority to issue license has been conferred by the sub-section, but the same has been expressly made subject to the control of the State Government. The . power of the licensing authority being subject to the control it appears to me to be apparent that the State Government has the power to direct the licensing authority to grant a licence to a particular individual. "There are no limitations placed on the controlling power to the State Government as regards the grant of a license under the Act and a plain reading of the sub-section shows that the grant of licenses by the licensing authorities are subject to the control of the State Government which obviously means that the State Government may set aside their orders and issue any directions in this respect which it may consider to be fit and proper. In this case it has been proved from the facts stated in the counter affidavit which have not been controverted in the rejoinder that the State Government had issued directions to the licensing authority to issue the license in favour of the respondent No. 2.

5. The next argument of the learned counsel was that assuming this to be the position, the order directing the issue of the license must have been signed by the District Magistrate himself. But I do not think that in cases where a license is granted under the instructions of the State Government it matters very much as to who signed the order or the actual license. The authority granting the license in such a case is really the State Government as it is the Government which issues directions to the licensing authority, namely, the District Magistrate to grant the license to a particular individual. The function of the licensing authority under the circumstances becomes merely a ministerial function. The licensing authority has not to apply its mind any more to the question to whom the license should be granted and it has just to carry out the instructions issued by the State Government. The authority directing the present license to be issued to the respondent No. 2 being the State Government the actual order and the license could very well have been signed by the Cinema Magistrate. In any case, the objection even if technically correct, is not such which should be given effect to in the proceedings under Article 226 of the Constitution. In the exercise of the jurisdiction conferred by Article 226 of the Constitution this Court is not to be guided by extreme technicalities or even irregularities which do not affect the merits or justice of the case.

6. Another point argued in this connection by the learned counsel for the petitioner is that Section 5(3), Cinematograph Act of 1918 has been repealed by the subsequent Cinematograph Act, 1952, No. 37 of 1952 and he has referred me in this connection to Section 18 of the latter Act. Section 18 is in the following words: "The Cinematograph Act, 1918 (2 of 1918), is hereby repealed:

Provided that in relation to Part A States and Part B states the repeal shall have effect only in so far as the said Act relates to the sanctioning of cinematograph films for exhibition."

Part one of this latter Act contains only Sections 1 and 2, Section 2 being the section which defines certain terms. Part two contains provisions for the constitution of a Board of Film Censors and the Certification of Films. It also provides for appeal and powers of Central Government to modify orders passed u/s 4 or Section 5 and then certain penalties are provided for contraventions of this part and power is also given to the Central Government to make rules.

Part three is the part which relates to regulation of exhibitions by means of cinematographs, and it is this part which relates to the granting of licenses for exhibition of cinema shows. Part four only consists of Section 18 which is the repealing section and which I have already quoted in full. Now Sub-section (2) of Section 1 extends the operation of the provisions of Parts I, II and IV to the whole of India except the State of Jammu and Kashmir but part III has been applied to only Part C States. This would show that as far as the granting of licenses is concerned this Act does not apply to the State of U. P. which is one of the States mentioned in Part A. If the contention of the learned counsel for the petitioner is taken to be correct the position would be that there would be no provision left at all in any of the two enactments which would govern the grant of licenses. The scheme of the Act of 1952 shows that as far as this particular subject is concerned, namely, the subject of the grant of the licenses to exhibit cinema shows, the provisions of the old Act 2 of 1918 are still in force in Part A and Part B States. The other provisions concerning the censorship of the films have been altered by this latter Act and this alteration applies to the whole of India.

7. It further appears from the wording of Section 18 of the Act of 1952, that the repeal of the Act of 1918 in Part A and B States was confined to the sanctioning of the cinematograph films for exhibition. What it amounts to is that the repeal is confined to that portion of the older Act which is covered by part II of the new Act. Section 6 of the old Act is one of the sections which has been repealed by this latter Act. But the issuing of the licenses and the procedure provided therefore cannot be said to come within the wording of the repealing section because what it repeals is the sanctioning of cinematograph films and not the issuing of licenses for running cinema houses.

8. The last point urged by the learned counsel for the petitioner was that his clients were not given any opportunity by the State Government to place their

case before it. There is no provision anywhere in the Act of 1918 making it incumbent on the State Government to hear persons who want licenses for running cinema houses. The Cinema Magistrate had heard the parties and he had submitted the report to the District Magistrate. The District Magistrate came to the conclusion on these facts that none of the parties should be granted a license till the civil suit was decided. A representation was then made on behalf of the respondent No. 2 to the State Government and the State Government had all the facts before it and it then came to the conclusion that the possession of the building having been delivered to the respondent No. 2 it is this respondent who should have been given license for running the cinema shows also. I do not think- that it was necessary for the State Government to have issued notices to the parties and to have given them an opportunity of placing their cases before it. The order is in the nature of an executive order and in my opinion it is neither a judicial nor a quasi-judicial order. In any case, both the parties had had full opportunity of placing their cases before the Cinema Magistrate and it was not necessary that subsequent opportunities also should have been given to the parties at every stage of the proceedings. (9) These are all the points that were argued before me and I have come to the conclusion that this petition should fail. I accordingly, dismiss it with costs. Both the respondents will be separately entitled to one set of costs each.