
(1985) 11 AHC CK 0016

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 10602 of 1984

B.P. Singh

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 15-11-1985

Acts Referred:

Uttar Pradesh Cinemas (Regulation) Act, 1955 — Section 4, 5(1), 5(2), 5(3), 7

Citation : (1985) 11 AHC CK 0016

Hon'ble Judges : S.K. Mookerji, J;S.K. Dhaon, J

Bench : Division Bench

Advocate : R.P. Singh, for the Appellant;

Judgement

S.K. Dhaon, J.—In this petition, which has been preferred by one of the partners of a Firm " Heer Palace " Kanpur, the principal relied claimed is the issue of a writ in the nature of prohibition restraining the State Government from proceeding further with the action initiated be it u/s 7 of the U.P. Cinemas (Regulations) Act, 1955, hereinafter referred to as the Act, for the cancellation of a cinematograph licence granted to the said Firm.

2. It appears that Sri K.P. Singh, the Respondent No. 8, was one of the partners of the said Firm. It also appears that initially a joint licence was issued in favour of seven out of eight persons of the said firm. Sri K.P. Singh was one of the said partners. Later on, five persons obtained a joint licence and in this licence Sri K.P. Singa was not included. Sri Singh made a representation to the District Magistrate (the Licensing Authority) for the cancellation of the licence on the ground that his signatures on the application had been forged and he (the District Magistrate) had been defrauded in issuing a licence to five of the partners.

3. On 2nd April, 1984 the Additional District Magistrate (City) put up a note to the district Magistrate that the grievance made by sir K.P. Singh in the aforementioned application for the cancellation of the licence was the subject-

matter of a civil suit; the matter was sub-justice and therefore, it was not proper to proceed further in the matter. He also opined that the proceeding should be initiated after the decision of the Civil Court. On the foot of this note the District Magistrate made the following endorsement;

I agree.

4. Sri K.P. Singh made a representation to the State Government setting out there in the relevant facts and particularly the fact that his signatures had been forged upon the application made for the grant of a licence. It appears that the State Government directed the District Magistrate to obtain the version of the Petitioner and others in the form of an affidavit or affidavits. Accordingly, on 9th August, 1984 the District Entertainment Tax Officer, Kanpur sent a communication to the Petitioner and others requesting them to appear on 21st August, 1984 to give their versions. At this stage this petition was preferred in this Court.

5. In support of this petition, it is urged that the proceeding initiated by the State Government is without jurisdiction. In the forefront the submission made is that Sri K.P. Singh having once invoked the jurisdiction of the District Magistrate or the Licensing Authority for the cancellation of the licence, the doors of the State Government, so far as he was concerned, closed automatically. This argument is founded on a reading of Section 7, which shows that the powers of the State Government and the Licensing Authority in the matter of cancellation of licence are concurrent. For appreciating this submission, it may be necessary to read a few provisions of the Act.

6. Sub-section (1) of Section 5 lays down the conditions under which a licence is to be granted,

7. Sub-section (2) provides that subject to the provisions of Section 5 and to the control of the State Government and the interests of the general public, the Licensing Authority may grant licences under this Act on such terms and conditions and subject to restrictions as it may determine and on payment of such fees as may be prescribed.

8. Sub-section (3) may be extracted as an argument has been built upon the same:

Any person aggrieved by the decision of a licensing authority refusing to grant a licence under this Act may, within such time as may be prescribed, appeal to the State Government and the State Government may make such order in the case as it thinks fit.

9. We may at this stage straight way deal with one part of the submission. Sri Bhatnagar is right in his submission that Sub-section (3) of Section 5 was not available to Sri K.P. Singh. Surely, he was not aggrieved by the decision of the Licensing Authority refusing to grant a licence to him and, therefore, he could not invoke the appellate powers as contained in Sub-section (3) while making a

representation to the State Government to cancel the licence of the Petitioner and others.

10. Sub-section (1) of Section 7 may also be extracted. It reads ;

Notwithstanding anything contained in this Act where a licence has been granted u/s 5, it may be cancelled or revoked in the public interest

(i) by the State Government, where the licence was granted by the Government or by the Licensing Authority ;

(ii) by the licensing authority, where the licence was granted by such authority.

11. Sub-section (1A) of Section 7 lays down the conditions under which a licence may be cancelled or revoked. One of them being that the licence was obtained through fraud or mis-representation.

12. Sub-section (2) provides that where the State Government or the licensing authority is of the opinion that a licence granted u/s 5 should be cancelled or revoked it shall, as soon as may be, communicate to the licensee the grounds on which the action is proposed to be taken and shall afford him a reasonable opportunity of making a representation against it.

Sub-section (4) may be extracted:

Where the order suspending a licence under the proviso to Sub-section (2) or cancelling or revoking it under Sub-section (3) has been passed by a licensing authority, any person aggrieved by the order may within thirty days of the communication of such order to him, appeal to the State Government which may pass such order as it may think fit.

13. One of the well known principles of the construction is that a collision of the jurisdiction or conflict of the jurisdiction should be avoided. Keeping this principle in view, let us now examine the submission made by Sri Bhatnagar that in the instant case if the State Government is allowed to proceed further in the contemplated proceeding u/s 7, there is bound to be a collision in the course adopted by the Licensing Authority and by it the State Government we have already seen in Sub-section (1) of Section 7 that the State Government and the Licensing Authority are empowered to take action in a case where a licence has been granted by the Licensing Authority. It is to be noted that in the instant case the Licence was granted by the District Magistrate acting as the Licensing Authority. Having considered the matter carefully, we are of the opinion that it will be open to the State Government to take action u/s 7 so long as the proceedings initiated by the Licensing Authority are not concluded either way. Once the State Government sets the ball rolling by initiating proceedings u/s 7, the proceedings before the Licensing Authority will come to an automatic end. It is to be remembered that in Sub-section (2) of Section 5, the Licensing Authority is clothed with the power to grant a licence keeping in view not only the provisions of the Act but also the control of the State Government, it follows that

superintendence and direction of the State Government over the Licensing Authority are implicit. In any case, the State Government is vested with the power of regulating the activities of the Licensing Authority in the matter of grant of a licence of Sub-section (4) of Section 7 we find that an order passed by the Licensing Authority in a case of cancellation or revocation of a licence is amenable to the appellate jurisdiction of the State Government. Therefore, it cannot be said that once the Licensing Authority initiates proceedings u/s 7, the State Government becomes powerless. On the contrary, as already emphasized by us, the Licensing Authority should become inactive or cease to exercise the jurisdiction u/s 7 the moment the State Government initiates proceedings under that provision.

14. That matter can be looked from another angle. Section 4 provides that the District Magistrate shall act as the Licensing Authority. However, proviso to it empowers the State Government to constitute for the whole or any part of the State, such other authority as it may specify in the notification to be the Licensing Authority for the purposes of the Act. On 9th May, 1977, a notification was issued by the State Government whereby the Entertainment Tax Commissioner, U. P. concurrently with the District Magistrate, was empowered to exercise the power of the Licensing Authority u/s 7. We have already extracted above the order passed by the District Magistrate (Licensing Authority). In our opinion, the licensing authority in the instant case did not pass any order at all. He did not apply his mind to the controversy before him. He acted mechanically in just saying " I agree ". Therefore, for the purpose of this petition, there can be no difficulty in taking a view that really proceedings u/s 7 were not initiated at all by the Licensing Authority.

15. This petition has not been formally admitted. However, affidavits have been exchanged between the parties. We have heard learned Counsel for both the sides. We are, therefore, proceeding to dispose of this petition finally.

16. This petition lacks merit and it is dismissed summarily. The interim order passed by this Court on 17th August, 1984 is hereby vacated.