
(1981) 02 GAU CK 0002
In the Gauhati High Court
Case No : Civil Rule No. 108 of 1979

Darsailova Khawlhing

APPELLANT

Vs

The Deputy Commissioner and Others

RESPONDENT

Date of Decision : 23-02-1981

Acts Referred:

Assam Cinemas (Regulation) Act, 1953 — Section 10, 3, 4, 5
Assam Cinemas (Regulation) Rules, 1960 — Rule 11(2), 12, 14(2), 4, 4(11)
Constitution of India, 1950 — Article 19(1), 25, 26
Penal Code, 1860 (IPC) — Section 295, 296, 297, 298

Citation : (1981) 1 GLR 344

Hon'ble Judges : K.N. Saikia, J

Bench : Single Bench

Advocate : J.P. Bhattacharjee and S.N. Medhi, for the Appellant; B. Barua, D.P. Chaliha and K.K. Bezbarua, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Saikia, J.—In this writ application the Secretary of United Pentecostal Church, Aizawl town, a religious society established and registered under the Societies Registration Act, 1860, impugns the No objection Certificate issued by the Deputy Commissioner, Aizawl, Mizoram, under Rule 4(11) of the Assam Cinemas (Regulation) Rules, 1960 (hereinafter called "the Rules") in favor of the Respondent No. 4. Respondent No. 4 submitted an application in 1976 to the Deputy Commissioner Aizawl, who is the licensing authority under the Rules, for a No objection Certificate for construction of a cinema house at a site near to the Church of the Petitioner who on 7.12.76 wrote to the Deputy Commissioner vehemently objecting to the construction of the cinema house pointing out that the serenity of the Church services would be disturbed by such cinema house. On 12.8.77 the Deputy Commissioner granted the No Objection Certificate valid for a year to the Respondent No. 4. The Petitioner sent various representations to different authorities and ultimately on 12.12.78 sent a representation by way of appeal to the Lt. Governor of Mizoram pointing out the restrictions imposed

under Rule 9(2) read with Rule 12 of the Rules in the matter of granting a cinema license and pointing out that the site was within a radius of 44.20 mtrs. from the Church. It appears, on 12.1.79 the Deputy Commissioner sent a letter to the Petitioner to come to him on 24.1.79 along with other Church leaders to discuss about the matter which the Petitioner did but without any favorable decision. On 27.1.79 the Deputy Commissioner wrote to the Petitioner noting the discussions made on 24.1.79 and assuring him that through executive orders, the authority would regulate cinema shows, specially their timings, in such a manner that the Church services would not be affected. Hence this petition.

2. Mr. J.P. Bhattacharjee, the learned Counsel for the Petitioner, submits, inter alia, that the grant of the No Objection Certificate is violative of Rule 5(2) of the Rules which puts a bar against constructing a cinema house within a considerable distance from the existing hospitals, educational institutions, place of worship, cremation grounds etc; that the Petitioner being an aggrieved person having objected the Deputy Commissioner erred in granting the No objection certificate without disposing the Petitioner's objections according to the law; that the grant of the impugned No Objection Certificate being in clear violation of the Petitioner's fundamental rights granted under Articles 25 and 26 of the Constitution of India the same is illegal, ultra vires and void and liable to be set aside and quashed.

3. Mr. K.K. Bezbarua, the learned Standing Counsel, Mizoram, submits that Rule 6(2) of the Rules originally prescribed a distance of two furlongs which was reduced to one furlong vide Notification published in the Assam Gazette part II-A dated 19.12.1962 which was further amended by Notification No. GCN. 8/59/pt/120 dated 11.9.1963 published in the Assam Gazette dated 18.9.63 as "within such a distance as the State Govt. considers reasonable," and in the instant case the State Government considered the distance from the Petitioner's Church to be reasonable; that while granting the No Objection Certificate the Deputy Commissioner is only to see whether the building Rules are complied with and the requirement of Cinema Regulations are not required to be considered; that the Petitioner shall construct the cinema house at his own risk of getting or not getting a cinema license; that that Deputy Commissioner after discussion with the Church leaders assured that the cinema shows would be so regulated as not to disturb the Church services and that Aizawl being a hilly place level surface suitable for cinema house is extremely rare; that there is not a single cinema house at Aizawl till to-day and the Government has considered all these factors in approving the No objection Certificate, which does not deserve interference front this Court. He also submits that the petition is liable to be dismissed for inordinate delay.

4. Mr. B.C. Barua, the learned Counsel appearing for the Respondent No. 4 submits, inter alia, that immediately after receipt of the No objection Certificate he started construction of the cinema house according to the specification and has already laid sound proof materials to prevent disturbance and has also

constructed the sound tracks and only a small portion remains for completion; that the distance was considered reasonable by the Deputy Commissioner who discussed with the Church leaders and the Government approved the issue of the No Objection Certificate, that the serenity of the Church will not be disturbed as there is the M.L.A. Hostel in between the Church and the hall which will be sound proof ; that the petition has become infructuous in view of the near completion of cinema house constructed pursuant to the No objection Certificate; and that the Petitioner has no legal right to approach this Court objecting against the No Objection Certificate. He also submits that he is agreeable to abide by any condition laid down by the State Government besides his making the hall a sound proof one.

5. The precise question to be judicially determined is whether the impugned No Objection Certificate is invalid and liable to be quashed.

6. The relevant provision of the Assam Cinemas Regulation Act, 1953 (hereinafter called "the Act", and the Rules may conveniently be set out. The Act makes provision for regulating exhibition by means of cinematograph and the licensing of cinemas in the State of Assam. It is admitted by both the parties that the Act is applicable in Mizoram. Section 3 of the Act provides:

Save as otherwise provided in this Act, no person shall give an exhibition by means of a cinematograph elsewhere, than in a place licensed under this Act, or otherwise than in compliance with any conditions and restrictions imposed by such license.

7. Section 4 of the Act provides;

4. Licensing authority.- Subject to provisions of Section 5 the District Magistrate within the jurisdiction of his district or any other authority constituted by the State Government by notification in the Official Gazette (hereinafter referred to as the Licensing Authority) for the whole or any part of the State may grant licenses under this Act: Provided that no license shall be issued by the Licensing Authority except with the previous approval of the State Government who shall take into consideration all applications for the license in question and after such consideration may accord its approval to the proposal submitted by the Licensing Authority or direct such Authority to grant a license to any other applicants with or without such conditions as it may deem proper and in such cases such directions shall be deemed to be the previous approval of the State Government.

8. Section 5 puts restriction on power of licensing authority as follows:

5. Restriction on power of Licensing Authority-

(1) The Licensing Authority shall not grant a license under this Act unless it is satisfied that:

(a) the rules made under this Act have been substantially complied with; and

(b) adequate precautions have been taken in the place in respect of which the

license is to be given to provide for the safety of persons attending exhibitions therein.

2. The State Government may, from time to time, issue directions to licensees generally or to any licensee in particular for the purpose of regulating the exhibition of any film or class of films, so that scientific films, intended for educational purposes, films dealing with news and current events, documentary films or indigenous films secure an adequate opportunity of being exhibited, or where any such directions have been issued, these directions shall be deemed to be additional conditions and restrictions subject to which the license has been granted.

9. Section 10 of the Act gives power to the State Government to make Rules for the purpose of carrying into effect the provisions of the Act and accordingly the Rules have been framed. It is admitted that the Rules are applicable to Mizoram. Rule 4 provides for permission for construction of cinema building in the following language:

4. Construction of cinema building .- (1) Any person desiring to put up a building or structure to be used as a permanent cinema house shall make an application in writing to the Licensing Authority specifying the site where the cinema house is proposed to be put up. Each such application shall be accompanied by:

(a) "No objection" certificate.-A certificate from the Municipal or the Panchayat Authority having jurisdiction over the area that there is no objection to the erection of the proposed cinema building;

(b) complete plans, elevations and sections in duplicate, of the premises and all erections or buildings thereon drawn correctly to the scale of one-eighth of an inch to one foot and showing the width of all stairways, and the number steps in each, the width of corridors, gangways and door-ways the height of the galleries or tiers and the details of the cinematograph and of the plant for the generation or conversion of electrical energy;

(c) a site plan in duplicate on a separate sheet drawn to the scale of one-fourth of an inch to one foot showing the position of the premises in relation to any adjacent premises and to the public thoroughfares upon which the site of the premises abuts, and the arrangements, proposed for parking of motor car and other vehicle ;

(d) specifications of the various materials proposed to be used in the construction of the building;

(2) On receipt of the application and the plans, the Licensing Authority shall forward the same to the Executive Engineer concerned for approval and the applicant shall be bound to carry out such additions and alterations in the plans as may be directed by the Executive Engineer concerned before the plans are finally approved by him.

After the plans are finally approved by the Executive Engineer concerned, the Licensing Authority with the prior approval of the State Government may grant in Form A appended to these Rules, a "No objection" certificate in writing to the applicant to put up the cinema house in accordance with the plans finally approved ;

Provided that such a "No objection" certificate does by no means guarantee the issue of a cinema license which depend on separate application and fulfillment of the requirement of prescribed rules and instructions:

Provided further that in the case of a license either for temporary, open air cinema or for touring cinema, the condition of furnishing a "No objection" certificate as required under Rule 11(2)(ii) and Rule 14(2)(ii) respectively may be relaxed by the Licensing Authority to such extent as may be considered necessary having due regard to the safety measures for the spectators.

10. Rule 5 provides for application for license. Rule 6 provides for license for permanent cinema, the relevant provisions of which are as follows:

6. License for permanent cinema.- (1) A license for a permanent cinema may be granted by the Licensing Authority with the prior approval of the State Government in form B appended to these Rules.

(2) No permanent cinema house shall be allowed within such a distance the State Govt. considers reasonable having regard to the surrounding circumstances, from the existing Hospitals. Educational Institution, place of worihip, cremation ground, grave yard cemetery or other standing permanent cinema House.

(3) * * *

(4) * * *

It will appear that the impugned No Objection Certificate has been issued under Rule 4 of the Rules. The license shall have to be applied for under Rule 5 and shall have to be issued under Rule 6 but that stage has not yet arrived.

11. The Petitioner prays for cancellation of the No objection Certificate mainly on the grounds that the serenity of the Church will be disturbed and that it has bean issued contrary, to law.

12. What is the precise nature of the Petitioner's right to object to the issue of the No Objection Certificate? Under the general law a person has the right of enjoyment of his land so long he thereby does not impair the like rights of others. The owners has the right to build upon his own land or otherwise to utilize his own land, regardless of the fact that his doing so involves on interference with the light or air or sound which would otherwise reach the adjacent land and buildings of other persons. Under common law there may be acts of which, though harmful, are not wrongful, and give no right of action to him who suffers from the effects-demnum sine injuria. Such is a harm, caused

by some person who is merely exercising his own rights to property e.g, by withdrawal of underground water, *Bradford (Mayor of) v. Pickles* (1895) A.C. 587). or by competition in trade (*Mogul Steamship Co. v. Mc. Gregor* 1892 A. C. 25). In *Gloucester Grammar School case*-(1410) Y. B. Hill 11 Hen IV ? 47 Pl. 21, the Defendant set up a rival school to that of the Plaintiff's with such success that had to reduce their fees for each student from 40 pence to 12 pence a quarter. Yet, the action of trespass by two masters of the Grammar school against the Defendant who set up the rival school was held to be not maintainable as it was *damnum sine injuria*-damage without injury.

13. A Church is a place of worship. In England a Church means any church or chapel which has been consecrated for the purpose of public worship according to the rites and ceremonies of the Church of England. Brawling in Churches and church-yards is an ecclesiastical offence on the part of both clerks and laity in England. According to Halsbury's *Laws of England*, 3rd Edn? Vol. 10. page 641, constables, churchwardens and other officers and any other persons present may arrest without warrant persons who commit certain offences which disturb the peace in churches, chapels, churchyards etc. Under the Ecclesiastical Law of England a person who disturbs public worship in a church or chapel may be lawfully removed if he refused to desist from his disturbance. Inasmuch as all religious bodies are regarded by the Courts of law as in the same position in respect of the protection of their rights and the sanction given to their respective organizations, their endowments and any other rights which they may possess will be equally enforced by the law.

14. The Constitution of India includes under part III Article 25 which guarantees right to freedom of religion which includes freedom of conscience and free profession, practice and propagation of religion. Article 26 guarantees freedom to manage religious affairs, Chapter XV, Sections 295 to 298 I.P.C., deal with offences relating to religion. Section 296 punishes disturbances to religious assembly. There is no corresponding ecclesiastical law in India. Even assuming the law in India to be more or less the same as in England, it appears that the Church as a place of worship has to maintain peace and quietude. Serenity and tranquility are necessary for church services, which the Church has the right to maintain. This, however, is in so far as the Church's own premises are concerned.

15. Has the Church any right to demand of its neighboring land and building owners to maintain the same ? In other words, has the Church any rights over the neighboring lands and buildings, a *jura in re aliena* ? When some portion of the rights of full ownership is given to a person other than the owner to be exercised by such person to the exclusion of the owner, such detached rights were called in Roman law *jura in re aliena*, for example, servitude, *emphyteusis*, mortgage.

16. Servitudes such as rights of way, or rights of pasture, in English law are known as easements or profits, a *prendre*. *Praedial servitudes* (*servitudes praediorum*) were attached to things (land or house) over which they were

exercised and belonged to persons only as owners of adjoining land or an adjoining house; while usufruct and some similar interests were called personal servitudes (*servitudes personarum*), as being attached to the person that exercised the right, without regard to his owning or not owing adjoining property..

17. At common law there is no easement to free access of light and air. There may of course be an easementary right. An easement is a right annexed to land, to utilize other land of different ownership in a particular manner (not involving the taking of any part of the natural produce of that land or of any part of its soil) or to prevent the owner of the other land from utilizing his land in a particular manner. The piece of land in respect of which an easement is enjoyed is called the dominant tenement, and that over which the right is exercised is called the servient tenement, and the expressions dominant owner and servient owner bear corresponding meanings. (Halsbury, Vol. 12, para 1125 p. 520).

18. Easement may be created by or under the authority of statute. The owner of property has no right *ex jure naturae* to the passage of air to his tenement over his neighbor's land. A right, however, may be acquired as an easement where-by the owner of land upon which there are buildings can insist upon the continuance of the free passage of air to apertures in those building ; and can prevent his neighbor who owns the servient tenement from interfering with the supply of light or air by building Upon that tenement or otherwise. Easement may also be acquired to create nuisance. The right to use land or buildings in such manner which but for that right would constitute a private nuisance to other particular land or buildings of different ownership may constitute an easement, and accordingly a person may have an easement entitling him to create upon the dominate tenement what would otherwise constitute a nuisance by discharging gates and fluids or sending smoke over the tenement of his neighbor, or by making noises which are so audible to the servient owner that they would but for the easement cause an actionable nuisance. Similarly, he can acquire an easement allowing him to create vibrations and disturbances upon his tenement which but for that easement he would not be allowed to create.

19. Under the general law there does not appear to be any right enjoyed by a Church that its neighbouring land and buildings shall not create such noise as to disturb the serenity of the Church. The basis of such a right may, however, be found in statutes. If such a right is conferred by a statute the nature of the right, its obit and infringement, add the remedies for its violation shall have to be found within the four corners of the statute itself.

20. Sub-rule (2) of Rule 6, which I have set out above, makes it clear that no permanent cinema house shall be allowed within such a distance from a place of public worship as the State Government considers reasonable.

21. The grievance of the Petitioner's Church must be considered in the context of the above statutory provisions and not in the context of any easementary right to natural serenity.

22. Mr. Bezbarua has stated how this distance, which originally stood at two furlongs was reduced first to one furlong and to the present provision of "reasonable distance". It is admitted that the Deputy Commissioner is the licensing as well as No objection Certificate issuing authority. The Government of Mizoram in its affidavit States that the Deputy Commissioner invited the Church leaders to discuss on 27.1.79 as to what measures should be adopted to prevent disturbance of the Church serenity. They agreed that the hall should be a sound proof one and that relevant conditions be incorporated in the license as regards cinema shows so as not to disturb the serenity of the Church. This writ petition was filed on 9.3.79. The issue of the No objection Certificate was duly approved by the State Government.

23. Mr. Barua has stated that pursuant to the No objection Certificate, which was issued on 12.8.77 he has almost completed the cinema house by spending nine lacs rupees and has thus changed his position to his detriment. It appears from the records that pending disposal of this petition he could proceed with his construction at his own risk.

24. In *Jasbhai Motibhai Desai v. Roshan Kumar* AIR 1979 S.C. 578 the concept of "aggrieved person" for a writ of Certiorari to oppose the grant of No objection Certificate in violation of Rule 6 of the Bombay Cinema Rules, 1954, was discussed. It was held that in order to have the locus standi to invoke Certiorari Jurisdiction, the Petitioner should be an aggrieved person. The expression "aggrieved person" denotes an elastic, and, to an extent, an elusive concept. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and, extent of the Petitioner's interest, and the nature and extent of the prejudice or injury suffered by him. Their Lordships in para 39 of the judgment observed:

Now let us apply these tests to the case in hand. The Act and Rules with which we are concerned, are not designed to set norms of moral or professional conduct for the community at large or even a section thereof. They only regulate the exercise of private rights of an individual to carry on a particular business on his property. In this context, the expression "person aggrieved" must receive a strict construction.

25. The Act and the Rules with which we are concerned, are not designed to set norms of normal or professional conduct for the community at large or even a section thereof. They only regulate the exercise of private rights of an individual to carry on a particular business on the property. In this context the expression "person aggrieved" must receive a strict construction. Sub-rule (2) of Rule 6 amounts to the creation of an easementary right. It should be a strictly defined right.

26. In *State of Gujarat Vs. Krishna Cinema and Others*, it has been held that under the Bombay Cinemas (Regulation) Act, 1953 and Bombay Cinema Rules,

1954 the provisions of which are more or less similar to the Assam Act and the Rules, the District Magistrate and not the State Government is the licensing authority, in para 11 of the judgment it has been observed:

It was urged on behalf of the State Government that under Rule 5(2) in Ch. II State Government has absolute discretion to grant permission for the issue of a "No Objection Certificate" to the applicant. Under the Act the District Magistrate and not the State Government is the Licensing Authority. Granting that the State Government may validly control the exercise of power by the Licensing Authority, - on that question we express no opinion - the State Government cannot relying upon the Rules assume to itself the jurisdiction of the Licensing Authority to issue the license. Power to control the Licensing Authority u/s 5 is not the power to supplant the Licensing Authority. Again the power to grant a license under the Act is quasi-judicial, and by the use of the expression "absolute discretion" it is not intended to invest the Licensing Authority with arbitrary power so as to destroy the limitations to which it is subject by its inherent nature. The Act does not purport to confer arbitrary authority upon the Licensing Authority or the State Government, and by the use in the rules of the expression "absolute discretion" the legislative intent disclosed by the Act cannot be superseded.

27. In *R.M. Seshadri Vs. The District Magistrate, Tanjore and Another*, where u/s of the cinematograph Act the District Magistrate imposed certain condition pursuant to two notifications of the Government prescribing that the licensee shall exhibit at each performance one or more approved films of such length and for such length of time, as the provincial Government or the Central Government, may, by general or special order, direct, it was held to have amounted to unreasonable restrictions of the right of the licensee to carry on his business and must be declared to be void as against the fundamental right of the Appellant under Article 19(1)(g). But the right of the licensing authority to impose reasonable restriction was accepted.

28. In *T. Kondala Rao Vs. The Government of Andhra Pradesh and Others*, , it was that the objections against grant of license to construct a temporary cinema that the distance between the Petitioner's cinema and the licensed cinema was less than 8 kms, the injunction involved a question of fact which was not raised before the licensing authority and it could not be entertained in writ petition.

29. Reasonable means being in agreement with right thinking or right judgment: not conflicting with reason: not absurd, being or remaining within the bound of reason, not excessive. What is reasonable must always depend on the facts and circumstances of the case. The word "reasonable" implies intelligent care and deliberation, that is, the choice of a course which reason dictates. There can be no absolute standard of reasonableness. It would be unreasonable to expect an exact definition of the word "reasonable?". Reason varies in its conclusions from man to man and times and circumstances in which he thinks. It means rational according to the dictates of reason and not excessive or immoderate. An act is reasonable when it is conformable or agreeable to reason, having regards to the

facts of the particular controversy. Reasonable means what is considered reasonable by a prudent man in his own case under similar facts and circumstances. Reasonableness always has reference to the facts and circumstances of a particular case which is under consideration.

30. What is reasonable distance within the meaning of Rule 6(2) of the Rules is to be determined with reference to the facts and circumstances of each particular case. It may not be possible to formulate any hard and fast rule. Respondent No. 4 in para 2 of his affidavit-in-opposition states; "The Petitioner filed an application to the Deputy Commissioner, Aizawl opposing the issue of such a certificate. The Government of Mizoram as well as the Deputy Commissioner made detailed enquiries into the matter. The Chief Secretary to the Govt. of Mizoram, the Deputy Commissioner, Aizawl, and the under Secretary jointly proposed site for the cinema as well as visited the Church which is situated at a distance of about 50 mt. from the Cinema house intervened by the MLA Hostel Compound, the Press and some other buildings and after finding the site selected by the deponent suitable for construction of a Cinema house and situated at a reasonable distance from the Church, Respondent No. 1 granted him the no objection certificate vide letter dated 12.8.77 on basis of the said joint investigation (Annexure II".

31. The Respondent No. 3. The Union Territory of Mizoram in para 3 of its counter affidavit states; "In further answer this deponent begs to state that the question of the issue of "No objection Certificate" (as distinct from a Cinema license) under Rule 4(11) of the Assam Cinemas (Regulation) Rules 1960 (as amended) to Respondent No. 4 (Shri J. Lianchungnunga was considered by the Government of Mizoram and the application was scrutinised in a meeting of the Chief Secretary, Secretary G.A.D. and Deputy Commissioner, Aizawl. At the said meeting careful and due consideration was given to the grounds of objections raised on behalf of the Church in their letter dated 7.12.76 (Annexure 1 of the petition), the situation of the proposed Cinema house in relation to the church, and all other relevant matters including the provisions of Rule 6(2) of the Assam Cinemas (Regulation) Rules 1960 (as amended). After careful consideration of all these matters it was decided to approve the issue of "No objection certificate and letter No. GAD.53/ 77/25 dated 21st July 1977 (Annexure A) of the Affidavit-in-opposition of Shri Ashok Nath) was issued approving the issue of a "No objection certificate."

32. From the averments made in the petition and the affidavits-in-opposition as well as the statements made at the Bar, and Considering the fact that the Deputy Commissioner consulted the Church leaders who agreed with the former as regards the measures to prevent disturbance of the serenity of the Church, namely, a sound proof cinema house and regulation of timings of the shows and the fact that the State Govt. also under the facts and circumstances considered the distance to be reasonable and the facts that Aizawl is a hilly place and so long it has been without a cinema hall and that the Respondent No. 4 has spent

about Rs. 9 lacs in construction of the cinema house, which is nearing completion, it cannot be said that the distance between the cinema hall and the Church is not reasonable. There is, therefore, no violation of Rule 4 of the Rules. At this stage, the cinema license having not yet been granted nothing relating to issuance of such a license is considered to be at issue before this Court. The no Objection Certificate itself (Annexure II) said:" This certificate does not by itself authorize use of the proposed building for cinematographic exhibition nor does it by any means guarantee issue of a cinema license for which a separate application will be necessary".

33. In the result the petition is found to be without merit and it is rejected. The Rule is discharged. The stay order stands vacated, under the peculiar facts and circumstances of the case there will be no order as to costs.