

(1998) 11 CAL CK 0002
In the Calcutta High Court
Case No : Civil Order No. 6459 (W) of 1995

Dewchand Mintri

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 16-11-1998

Acts Referred:

West Bengal Cinemas (Regulation of Public Exhibition) Rules, 1956 — Rule 27, 8
West Bengal Cinemas (Regulation) Act, 1954 — Section 3, 5(2), 5(4)

Citation : (1999) 2 ILR (Cal) 157

Hon'ble Judges : Satyabarta Sinha, J

Bench : Single Bench

Advocate : Satya Narayan Roy, N.L. Roy and S.C. Karar, for the Appellant; Pranab Kumar Chatterjee, Geeta Gupta for Respondent Nos. 4 to 7 and M.K. Das, for the Respondent

Final Decision : Dismissed

Judgement

Satyabrata Sinha, J.—Whether a licence issued under the-provisions of the West Bengal Cinema Regulation Act, 1954 (hereinafter called and referred to as the said Act) is transferable or not is the question raised in this application.

2. The fact of the matter is as follows:

3. The Petitioner claimed themselves to be members of a Hindu Undivided Family known as Lakmichand Kaluram. The said Lakmichand Kaluram was granted a licence for running a cinema hall for exhibiting films in terms of the provisions of the said Act being Licence No. 3/1959. An application for construction of a permanent cinema hall was filed and upon such grant the same was completed in the year 1945.

4. Allegedly for the purpose of managing the business of exhibiting films, the Petitioner No. 1 Sri Banshidhar Mintri and Kedarmull Mintri, sons of Late Kaluram Mintri and Sri Brijmohan Mintri in their individual and independent capacities entered into a partnership with other persons, on or about September 5, 1967. It

is contended that later on the said partnership was dissolved and a new partnership was formed by a subsequent registered deed of partnership dated September 5, 1967. The said partnership agreement, inter alia, contained the following stipulations:

The legal representative of any deceased partner of the said firm of M/s. Kanchan Cinema shall not be entitled to prevent each surviving partners for carrying on the said business.

The surviving partners have the option to induct any legal representative of a deceased partner in the said business trading under the trade name and style of M/s. Kanchan Cinema.

5. It is contended that Shakabpa Group maintained this principle after taking over supervision with effect from April 1, 1975 and continued renewing the said licence yearly in the name of said H.U.F., therefore, there was no occasion to disbelieve the said Shakabpa. It is contended that against all norms of honesty and good faith reposed in them by other partners of "Kanchan Cinema" and the licensee H.U.F., said Shakabpa Group in collusion and connivance with the licensing authority at Darjeeling managed to get his name Tshering Wangel Shakabpa substituted in the very licence all along standing in the name of H.U.F. without disclosing the fact to other partners and specifically to the Petitioner No. 1 in whose name original licence stood and was the holder of the licence which stood in the name of said H.U.F. and numbered 3/1959.

6. Admittedly, although the said cinema licence was renewed from time to time the Shakabpa Group got the licence in their own name in 1980.

7. On or about April 4, 1985, a show-cause notice was issued to the licensee as to why the licence shall not be cancelled on the ground of violation of certain conditions mentioned therein. A reply to the said show-cause notice was filed by the aforementioned T.W. Shekabpa who was admittedly in-charge of the management. The Petitioners content that such substitution of the name Shakabpa was not known to them. The Petitioner No. 1 having learnt the substitution of the name of the Wangyal Shakabpa in the licence prayed for renewal of licence after the death of W.D. Shekabpa. It appears that various correspondences passed between the parties. By an order dated July 27, 1993. the Additional District Magistrate held:

The licensee pleads that the licence was renewed in their names upto 1980, whereupon it was misplaced and found again. The licence was verified to have been renewed upto 1980 in favour of the licensee. They plead that thereupon they were kept in ignorance by the manager Mr. Sakabpa.

The opposite party produces the unofficial minutes of a meeting in 1975 wherein it is stated that the management will be looked after by Mr. Sakabpa. However, the produced document was without any prejudice to the ownership/licenceeship of Lachmichand. Kaluram.

Even arguing that the Licenceship was transferred shall be an supra-legal and hence, untenable proposition as the B.A.T. Rules do not provide for the transferability of a licence. The permanent licence in Rule 8 of the W.B. Cinema (Regulation) Act, 1954 was not capable of being transferred or transacted.

There is no evidence of suspension, cancellation or any other form of termination of the licence issued to Lachmichand Kaluram either produced by the Opposite Party or available in this office.

In the absence of termination, the first party remains the licensee for the purposes of this office on behalf of the Government. Any transfer of licence, even if made, as a matter of conjecture, shall be void ab initio.

Kindly restores the rights to the licence at once, and eliminate all or any irregularity that may have crept in over time wilfully or otherwise."

8. The case of the Respondent No. 7, on the other hand, is that the cinema had in question known as Kanchan Cinema since 1980 was being run under the licence issued in favour of his father who had been managing the same till 1992. The said Respondent applied for substitution of his name in the licence as he was the legal representative of the said T.W. Shekabpa.

9. It has further been pointed out that the very fact that for long 13 years, no step had been taken by the Petitioner clearly goes to show that the Petitioner had not been taking any interest in running the aforementioned cinema hall nor discharged any statutory liability. As regards the aforementioned order dated July 27, 1993 passed by the Additional District Magistrate, it has been contended that the said authority had no jurisdiction to pass the said orders under the provisions of the said Act which, on appeal, had been set aside and admittedly the matter was remitted to the licensing authority.

10. Admittedly, thereafter by an order dated October 14, 1993, the District Magistrate directed grant of licence in favour of Respondent No. 7 and rejected the case of the Petitioner. An appeal was preferred there against by the Petitioner No. 2 and the appellate authority also by reason of an order dated January 21, 1994 dismissed the said appeal.

11. Mr. S.N. Roy, the Learned Counsel appearing on behalf of the Petitioner inter alia submitted that the fact that this Hindu Undivided Family M/s. Lakmichand Kaluram were the owners of the building as also the plant and machinery is not in dispute. It has also not been disputed, contends the Learned Counsel, that the partnership was constituted for managing the affairs of the aforementioned cinema hall wherein T.W. Shekabpa was only inducted as partner. In that view of the matter, contends the Learned Counsel, the Respondent must be held to have acted arbitrarily in directing transfer of the said licence in favour of Shakabpa Group. Reference in this connection has been made to a decision of Mahitosh Mazumdar, J, in Gobardhan Chakraborty and others Vs. Abani Mohan and another, and a judgment of mine in Kalipada Barik v. District Magistrate,

Midnapore 1997 W..L.R. 14.

12. It is contended that the Cinema Licence No. 3/ 1959 was issued in the name of H.U.F. and remain in such name all along till the Respondent No. 7 being the son of a deceased partner who acted as the Manager of the said Cinema Hall got the said licence transferred in his own personal name in collusion and connivance with the local licensing authority at Darjeeling taking advantage of the local residence and acquaintances.

13. Having heard the Learned Counsel for the parties and having considered the materials on record, I am of the opinion that this Court cannot go into a disputed question as regards the right of the management of the cinema hall in question. The question as to whether the partnership stood dissolved and/or whether the Petitioners No. 1 being a partner of the said partnership firm has wrongfully been ousted from management of the partnership property cannot be gone into in this writ application. The District Magistrate, Darjeeling had also rightly refused to enter into the question of title. He referred to the rival claims of the parties and arrived at a decision that by argument in 1974-75 the said Shakbpa became the managing partner of the said cinema and had actually been managing the same as the managing partner. He has further arrived at a finding of fact that after the death of the aforementioned W.D. Shakbpa, the private Respondent, has been managing the affairs of the cinema hall by depositing amusement tax and by discharging other statutory liabilities.

14. The appellate authority also while disposing of the appeal in exercise of his power under Sub-Section 4 (c) of Section 5 of the Act read with Rule 27 of the West Bengal Cinema (Regulation) Rules, 1956 upon tracing the fact of the matter, took into consideration the arguments advanced before him by the parties concerned and considered a large number of decisions cited before him. The appellate authority came to the conclusion that the question as regard the right of the partners under a partnership deed vis-a-vis the alleged right claimed by them as owner of the building as also plant and machinery cannot be a subject matter for adjudication before a statutory authority. It was held that the District Magistrate has rightly and judicially acted in the matter. It was observed:

It can at best be described as an internal arrangement made for running the cinema hall. So the existence of the partnership firm with its original partners and/or the substitutes of the original partners, and its existence or non-existence now is not at all a point to be considered in regard to the granting and holding of the cinema licence. Secondly, the original licensee Shri Lakshmichand Kaluram by non-renewal of the licence, non-deposit of renewal fees and taxes and non-payment of an amount of Rs. 16,716.70 P. owed by it to the Ministry of Information and Broad-casting since 1980 had forfeited its right to hold the licence for running the cinema hall. In other words, the cinema licence bearing No. 3 of 1959 dated 5.1.59, and renewed from time to time, had ceased and terminated since 1980 in view of the reasons stated above.

15. It has further been noted that no appeal was filed when a licence was granted in the year 1980 and renewed subsequently. It was further noticed:

Lastly, the stipulation that the licence shall remain in force as long as the licensee owns, leases or manages a cinema hall" is satisfied by Shri Jigma Dedan Shakabpa, the Respondent, in whose favour the licence was granted by the licensing authority in his order dated 13.6.94. No one has questioned that Shri Jigma Dedan Shakabpa now manages and is in possession of "Kanchan Cinema", Kalimpong and possession, as the saying goes, in nine points of law.

16. In terms of Section 3 of the said Act, Cinema Halls for exhibition of films are required to be licensed. The licencing authority is the District Magistrate. A licence is required to be granted to a person who is capable of complying with the requirements of the Act and the Rules and have taken the precautions prescribed thereunder.

Sub- Section (2) of Section 5 of the said Act reads thus:

5. Restrictions on powers of licensing authority. Appeal and Revision, (1)....

(2) Subject to the control of the State Government, the licensing authority may grant licences, under the provisions of this Act and the Rules made thereunder, to such persons as that authority thinks fit and on such terms and conditions and subject to such restrictions as it may determine and the terms and conditions laid down shall include the prescribing of such prices of admission as the licensing authority may determine.

17. Sub-section (2) of the said Act provides for an appeal by any person aggrieved by an order of licensing authority granting or refusing to grant licence. An appeal was preferred in terms of the aforementioned provision and the appellate court affirmed the finding of fact arrived at by the licencing authority. Furthermore, it has not been shown that even in terms of the partnership deed or by reason of any other instrument he was entitled to represent the entire partnership firm.-In fact, as it appears from the records, he himself had executed a power of attorney in favour of the Petitioner No. 2 who had been fighting out the litigation on his behalf. The appeal before the Commissioner against the order of the District Magistrate has also been preferred by him in his own name and not in the name of the Petitioner No. 1 which could not be done.

18. In this view of the matter, the question raised by the Learned Counsel for the Petitioner in this application appears to be misconceived. In terms of the provisions of the said Act, a licence is required to be granted. No licence has ever been granted in favour of the Petitioners or the partnership firm which had allegedly been running and/or managing the affairs the business. A licence can only be granted in favour of the person who has been running the business. Such licence had been granted in favour of the father of the Respondent No. 7 in the year 1980. The dispute between the parties cropped up in 1993 after the death of the licensee.

19. Furthermore, when a licence remained operative for a long period, the Petitioners cannot claim any equitable relief in this writ application. In *Gobardhan Chakraborty and Ors. v. Abani Mohan and Anr.*(Supra) the Learned Judge was considering an appeal arising out of a decree. In that case, the licence was granted in the name of an individual but he entered into a partnership. A question arose as to whether the said partnership was valid or not. Such a question does not arise in the instant case. The said decision is not applicable to the fact of the case. In *Kalipada Barik* (Supra) the licensee was not granted on the ground that a suit for eviction was pending. This Court held:

From a perusal of the said Act it does not appear that the licensing authority can decide the question of title in respect of the land in question. Admittedly the Petitioner is in possession thereof, whether the Petitioner has right to hold the said land or not can only be decided by the Civil Court.

20. The said decision, therefore, runs counter to the contention of Mr. Roy. In this view of the matter in the opinion of this Court it is not a case where discretionary jurisdiction of this" court should be exercised. This application is, therefore, dismissed but without any order as to costs.