
(2000) 10 AHC CK 0053

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 41 of 1993

Jagdish Prasad Singh

APPELLANT

Vs

State of U.P.and Another

RESPONDENT

Date of Decision : 12-10-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Cinematograph Rules, 1951 — Rule 3(3), 4(d), 5

Citation : (2000) 10 AHC CK 0053

Hon'ble Judges : S.Rafat Alam, J and R.K.Agrawal, J

Final Decision : Allowed

Judgement

R.K. Agrawal, J.—The petitioner Jagdish Prasad Singh who is the proprietor of Sanjay Talkies, Jeanpur, Azamgarh has filed the present petition under Article 226/227 of the Constitution of India, seeking a writ order or direction in the nature of certiorari quashing the order dated 2321992 passed by the Institutional Finance Secretary, Uttar Pradesh, Lucknow Respondent No. 1, filed as Annexure 17 of the writ petition as also a writ of mandamus commanding the respondents to grant licence to the petitioner under the grantinaid scheme dated 21st July, 1986 and all benefits accruing thereunder.

2. The facts of the case in brief are that the petitioner submitted an application on 19th August, 1998 under Rule 3 of Uttar Pradesh Cinematograph Rules, 1951 hereinafter referred as the Rules) before the District Magistrate/Licensing Authority Azamgarh Respondent No. 2, who granted permission under Rule 3 (3) of the Rules vide order dated 17th July, 1989. The petitioner started the construction of the permanent cinema building and after completing the same made an application for grant of licence for exhibiting cinematograph films on 2331990. According to the petitioner, the Additional District Magistrate (F) directed the authorities concerned to make physical inspection and to submit their reports upto 3131990. In compliance with the direction issued by the ADM (F) the Chief Medical Officer, Azamgarh, the Fire Officer Azamgarh and Executive Engineer PWD Azamgarh and the Superintendent of Police submitted their

reports by 313 1990. According to the petitioner, he had made an application before the Electricity Department for giving the requisite report and had deposited prescribed fee as also Form B on 2931990. When nothing was heard from the licensing authority on the petitioner's application for grant of licence the petitioner made a representation to the Secretary Institutional Finance Government of U.P. Lucknow on 5th December, 1991 for redressal of his grievance. The State Government had passed an order on 2321992 directing the District Magistrate/Licensing Authority to consider the grant of licence in accordance with the Rules without the benefit of grantinaid. The order dated 2321992 is under challenge in the present petition.

3. We have heard Shri Govind Krishna, learned Counsel for the petitioner and Shri C.S. Singh learned Standing Counsel who represents the respondent.

4. The learned Counsel for the petitioner submitted that under the GO dated 21st July, 1986 the petitioner was entitled for the benefit of grantinaid scheme in as much as the petitioner has applied for grant of licence before 3131990 and had also made an application for approving the siteplan for construction of permanent Cinema building on 1st January, 1983. He submitted that there is no reason as to why the benefit of grant in aid scheme is being denied to the petitioner. Shri C.S. Singh, learned Counsel however submitted that the application for grant of licence filed by petitioner was incomplete in as much as it did not accompany the certificate from Electrical Inspector to Government that the Electrical installation conform to the required standard and the existing Rules as provided in Rule 4 (d) of the Rules. Thus, according to him the petitioner having not filed an application in accordance with the provisions of Rule 4 of the Rules the benefit of grantinaid scheme under the Government order dated 21st July, 1986 cannot be given.

5. Having heard the learned Counsel for the parties we find that the application filed by the petitioner was complete in all respect except a certificate from the Electrical Inspector to Government certifying that the electrical installation conform to the required standard and the existing Rules as provided in Rule 4 (d) of the Rules. However we find that Rule 5 of the Rules empowers the licensing authority to temporarily dispense with the requirement of Clause (d) of Rule 4 in a situation where the Electrical Inspector on receipt of a written request from the applicant has for six weeks therefrom being unable to carry out the inspection. Thus the licensing authority has the power to dispense with the requirement of Rule 4 (d) of the Rules when within six weeks the Electrical Inspector has not been able to carry out the inspection of the electrical installations in the premises of the petitioner. In paragraph 8 of the counter affidavit filed by Shri Chandra Prakash Tripathi, District Entertainment Tax Officer, Azamgarh, on behalf of Respondent No. 2 it has been stated that the petitioner had filed the requisite certificate on 17th November, 1991. Thus the petitioner had complied with all he requirements of Rule 4 of the Rules. The question is as to whether the submission of the certificate of the Electrical Inspector alongwith application filed

under Rule 4 is mandatory or is only directory. As already mentioned above Rule 5 of the Rules empowers the licensing authority to temporarily dispense with the requirement of the certificate of the Electrical Inspector as envisaged under Rule 4 (d) of the Rules if the Electrical Inspector has been unable to carry out the inspection within six weeks.

6. A similar question came up for consideration before this Court in the case of Pawan Palace v. Licensing Authority / District Magistrate, Mau and others, 1993 Allahabad Weekly Cases page 927, wherein this Court has held as follows:

?(6) The short question and the only question for consideration by us is whether on the facts and circumstances of this case under the said scheme the petitioner would qualify for the grantsin aid or not. It is not in dispute that the petitioner did make an application after permanent construction of the cinema building with a prior permission granted for it by the authorities under Rule 4 on 15th March, 1990 within the stipulated period under the said scheme. Rule 4 does specify the documents which have to accompany the said application. The respondentauthorities desired those documents to be submitted by the petitioner which did not accompany in the aforesaid application. That was also filed on 30th March, 1990 that is to say within the said period. Thereafter the formalities relating to the Inspection and submitting the reports by Chief Medical Officer, Fire Officer and Electrical Inspector was admittedly submitted later on and actual grant of licence was also issued to the petitioner from 1st December, 1990. The act of grant of licence under Rule 4 and submitting the three reports admittedly is beyond the said period. However making of an application and also filing the documents accompanying the said application as required under Rule 4 was submitted within the said period. In such a situation the contention on behalf of the respondentState that since the petitioner obtained the reports from the concerned, officers belated and licence itself having been granted much later he would be ineligible under the GO is not sustainable. The significant words under paragraph 4 of the said GO are to give benefit of grantsinaid only to those persons who make an application for the grant of licence (Rule 4) within the said period. The language is not actual grant of licence or even submitting of the reports of the officer concerned. So far as submitting the reports by the said three officers the petitioner has requested for submitting the said reports. If at all there is delay in it, by the said officers that could not be on account of petitioner"s laches. In fact initially when day was caused in disposal of the application he moved the Commissioner and subsequently on the direction of the Respondent No. 2 his said application was rejected, but later on approaching the concerned authority saying everything has been completed by the petitioner, the said licence was granted. Apart from the slackness or slow disposal of the petitioner"s application in our considered opinion, this is not relevant for the purpose of claim of petitioner for grantsinaid under the said GO. Even if promptly the concerned respondentofficers submitted reports would make no difference. As we have said above the words used in the said GO are "making an application for "the licence" of course within the said period. Making of an application for

licence could not be granting a licence. If the intention was to benefit only those who have obtained licence for exhibition of films, the words "making of an application" would not have been there instead grant of licence would have been there. In the present case it is not grant of licence but only making of an application for licence is the requirement under the said GO. In the present case we find not only an application was made within the said period even accompanying documents as required under Rule 4 were also submitted within the said period and hence rejection of the claim of the petitioner for grantsinaid by means of impugned order is unsustainable.?

7. In view of the law laid down by this Court in the case of Pawan Palace with which we respectfully agree, the delay in submitting the report of the Electrical Inspector was not on account of the petitioner's laches. Further taking into consideration the provisions of Rule 5 of the Rules which empowers the licensing authority to temporarily dispense with the certificate mentioned in Rule 4 (d) relating to the inspection of the Electrical Inspector, the provisions of Rule 4 (d) are only directory in nature. Therefore, the petitioner could not have been denied the benefit of the grantinaid scheme.

8. This Court vide order 21st January, 1993 had passed the following order on the order sheet:

?2111993. Affidavit of service has been filed today by the learned Counsel for the petitioner. Inspite of service no counteraffidavit has been filed by opposite party No. 2.

Opposite party No. 2 is directed to issue provisional licence to the petitioner under the grantinaid scheme dated 2171986 within a period of two weeks from today.

M.P. Singh, J.?

9. It appears that provisional licence has been granted to the petitioner to exhibit the cinematograph films and the petitioner has run the cinema hall under the grantinaid scheme envisaged by GO dated2171986.

10. In view of the foregoing discussions we hold that the provisions of Rule 4 (d) of Rules are directory and not mandatory and further the conditions laid down by the Government in the impugned ^ order dated 2321992 that the licence be granted in grantinaid is invalid and contrary to law.

11. In the result the writ petition succeeds and is allowed. However, the parties bear their own costs. Petition allowed.