

(1998) 03 GUJ CK 0002
In the Gujarat High Court

Janta Touring Talkies

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 05-03-1998

Acts Referred:

Bombay Cinemas (Regulation) Act, 1953 — Section 2(c), 3, 5, 6, 9
Cinematograph Act, 1952 — Section 2(c)
Constitution of India, 1950 — Article 14, 19, 19(1), 19(1)(g), 19(2)

Citation : (1998) 2 GLR 1698

Hon'ble Judges : M.S. Shah, J

Bench : Single Bench

Judgement

M.S. Shah, J.—This petition under Article 226 of the Constitution is filed by the Manager of a touring cinema for a writ of mandamus or any other appropriate order for a declaration that the action of the State of Gujarat and the Mamlatdar and Licensing Authority at Babra, District Amreli in not renewing the licence beyond January 31, 1998 was ultra vires the provisions of the Bombay Cinema (Regulation) Act, 1953 (hereinafter referred to as "the Act") and the Rules framed thereunder and was also violative of the petitioner's rights under Articles 14, 19 & 21 of the Constitution. The petitioner has also prayed for a writ of mandamus for directing the respondents to renew the petitioner's licence for the touring cinema beyond January 31, 1998.

Facts

2. The facts leading to filing of the petition, as averred by the petitioner, are as under:

The petitioner established the touring cinema called "Janta Touring Talkies" on February 11, 1986 under a licence issued by the prescribed Officer and Executive Magistrate-cum-Mamlatdar, Babra under Rule 103 of the Bombay Cinema Rules, 1954 (hereinafter referred to as "the Rules"). The said licence was extended without any break upto January 31, 1998.

There was another touring cinema run by respondent No. 3 called Shivam Cinema at Babra. Said Shivam Cinema which was earlier a touring cinema was converted into a permanent cinema and the licensing authority granted respondent No. 3 a permanent licence under Rule 103 of the Rules on October 10, 1997. When the petitioner applied for renewal of licence for his touring cinema, which was expiring on December 31, 1997, the licensing authority informed the petitioner that since a permanent cinema was established in Babra area, the petitioner's licence would not be renewed. The petitioner took up the matter with the State of Gujarat and licensing authority and, therefore, the petitioner's licence for the touring cinema was renewed upto January 31, 1998. However, that action of the authorities came to be challenged by respondent No. 3-Proprietor of Shivam Cinema before This Court in Special Civil Application No. 122 of 1998. At the hearing of the said petition before This Court on 13-1-1998, the learned A.G.P., appearing for the State of Gujarat and the licensing authority made a statement under the instructions that the authorities had taken decision not to renew the licence of the present petitioner (Janta Touring Cinema) beyond January 31, 1998. In view of that statement, the petition of Shivam Cinema (respondent No. 3 herein) was permitted to be withdrawn with liberty reserved to the petitioner herein (Janta Touring Talkies) to challenge the decision of the authorities not to renew the licence beyond January 31, 1998. A communication that the petitioner's licence is not to be renewed was also sent by the licensing authority to the petitioner on January 28, 1998. Accordingly, the present petition has been filed for appropriate reliefs and for a mandamus to direct the authorities to renew the licence of the petitioner beyond January 31, 1998.

3. In response to the notice issued by This Court, affidavit-in-reply has been filed by Mr. P. G. Vyas, Under Secretary to the Government of Gujarat, Information, Broadcasting and Tourism Department. Another affidavit-in-reply has been filed by respondent No. 3-Proprietor of Shivam Cinema. The stand of the authorities as disclosed in the affidavit is that in view of the provisions of Rule 103 of the Rules, ordinarily touring cinema licence shall not be granted for a place where there is already a permanent cinema and that touring cinema licence shall not be renewed for a place where there is already a permanent cinema. Hence, since the permanent cinema of respondent No. 3 has come into existence at Babra, i.e., same town in which the petitioner's touring cinema was earlier granted licence, the licence in favour of the petitioner was not renewed beyond January 31, 1998. It is also stated that the extension from December 31, 1997 to January 31, 1998 was granted on sympathetic consideration.

Contentions on behalf of Petitioner

4. At the hearing of this petition, the learned Counsel for the petitioner has mainly contended that respondent-authorities have failed to exercise jurisdiction vested in them on a misconception of law by proceeding on the basis as if the licence for a touring cinema cannot be granted or renewed if such touring cinema is set up or is to be set up in a town where there is already a permanent cinema.

It was submitted that the word "place" in the proviso to Rule 107 means a site and not area in the sense of a town or area as construed by the respondents. The relevant proviso to Rule 107 reads as under:

Provided further that the licence of a touring cinema at a place may be renewed, from time to time, until such time as a permanent cinema, a Janta Cinema or, as the case may be a Drive-in-Cinema is opened, or allowed to remain open, at the place, in accordance with the provisions of these rules.

Reliance is placed on the definition contained in Section 2(c) of the Act which reads as under:

"Place" includes a house, building, tent and any description of transport, whether by sea, land or air.

Reference is also made to the Preamble to the Act providing for licensing of places in which films are exhibited in the State and also to provisions of Sees. 5 and 7 of the Act read with Rules 101,103 and 107 which have used the word "place" in contradistinction to the word "area" used in Section 6 and Rules 75 and 76.

It is, therefore, submitted that the word "place" has a reference to the place of exhibition or the place of event and it does not mean an area such as a town or a village.

5. Reliance is placed on a decision of This Court in the case of Krishna Cinema and Others Vs. The State of Gujarat and Another, for contending that the provisions of the Bombay Cinema (Regulation) Act, 1953 are required to be strictly construed as they place restrictions on the fundamental right to carry on business. Reference is also made to the decision of the Delhi High Court reported in Balwindar Singh Vs. Delhi Administory and Others, , which refers to the definition of "place" in Section 2(c). The learned Counsel has also relied upon "the Principles of Interpretation of Statutes" by Maxwell (Page 86) and the decision of the Supreme Court in the case of Utkal Contractors and Joinery Pvt. Ltd. and Others Vs. State of Orissa and Others, .

6. On the basis of the aforesaid provisions and the authorities, it is submitted that the object of the Act was not to restrict the right of the person to carry on business in running a touring cinema but merely do regulate the place of exhibition and, therefore, the word "place" in Rule 107, especially the second proviso thereto relied upon by the respondents, cannot mean area as referring to a town or village but it means the place of exhibition. It is submitted that all that second proviso to Rule 107 intended was that a person cannot run a permanent cinema as well as a touring cinema on the same site and that the Rule was not required to be construed any further so as to take away the right of the person to run a touring cinema in a town or a village merely because there comes up a permanent cinema in the same town or village. It is also submitted that unlike a provision in the Gujarat Secondary Education Regulations under which unfair

competition may be a ground for refusing permission for opening a new school, the present Act or Rules do not provide for any such restriction nor do they confer any right upon the owner of the permanent cinema to object to the coming up of a touring cinema in the same town or village. In this connection reference is also made to sub-rule (3) of Rule 3 which provides for objections being invited from schools, colleges, hospitals, temples and other religious public places lying within the radius of 200 metres in the case of permanent or touring cinema, but the said provision does not at all refer to any objection being invited from any other cinema within that area.

Contentions on behalf of Respondents

7. On the other hand, Mr. Bhalaja, learned A.G.P., for the State of Gujarat and the licensing authority submitted that the word "place" in Rule 103 and the second proviso to Rule 107 mean the geographical area like town or village and that this interpretation of the word "place" is in vogue since last more than 30 years as is evident from the Government Circular dated February 16, 1966 and the letter dated October 9, 1970 addressed by the Under Secretary, Home Department to the District Magistrate, Sabarkantha, Himmatnagar, with copy endorsed to all other District Magistrates and also from letter dated August 19, 1968 from the State Government to the Police Commissioner, Ahmedabad and all District Magistrates. These circulars and letters were taken on record at the time of hearing.

8. Mr. Kanabar, learned Counsel for respondent No. 3-proprietor of Shivam Cinema, has supported the stand of the authorities and has further submitted that wherever the rule-making authority intended to refer to the site of a touring cinema the specific word "camp" or "camp site" was used as use in Explanation 1 to Rule 6, Rule 26, Rule 108 etc.

Discussion

9. I have given anxious and thoughtful consideration to the submissions made by the learned Counsels for all the parties, in order to find out meaning of the word "place" in Rule 103 and in the second proviso to Rule 107 of the Bombay Cinema Rules, 1954-whether it means a site or a place of exhibition as contended on behalf of the petitioner or a town or village as contended on behalf of the respondents. For undertaking this exercise, where do we begin?

10. In the case of Utkal Contractors and Joinery Pvt. Ltd. and Others Vs. State of Orissa and Others, , the Apex Court has reiterated the following important principle of interpretation of statutes:

A statute is best understood if we know the reason for it. The reason for a statute is the safest guide to its interpretation. The words of a statute take their colour from the reason for it. How do we discover the reason for a statute? There are external and internal aids. The external aids are Statement of Objects and Reasons when the Bill is presented to Parliament, the reports of Committees

which preceded the Bill and the reports of Parliamentary Committees. Occasional excursions into the debates of Parliament are permitted. Internal aids are the Preamble, the scheme and the provisions of the Act. Having discovered the reason for the statute and so having set sail to the wind, the interpreter may proceed ahead. No provision in the statute and no word of the statute may be construed in isolation. Every provision and every word must be looked at generally before any provision or word is attempted to be construed.

(Emphasis supplied)

Statutory Provisions

11. Coming to the provisions of Bombay Cinema (Regulation) Act, 1953, its Preamble says that the Act has been enacted to provide for regulating exhibitions by means of cinematographs and the licensing of places in which the cinematograph films are exhibited in the State. Section 2(c) gives an inclusive definition of the word - "place" includes a home, building, tent and any description of transport, whether by sea, land or air. Section 3 provides that save as otherwise provided in the Act, no person shall give an exhibition by means of a cinematograph elsewhere than in a place licensed under the Act or otherwise than in compliance with any conditions and restrictions imposed by such licence. Section 5 imposes restrictions on powers of licensing authority and expressly provides that the licensing authority shall not grant a licence under the Act unless it is satisfied that (a) "the Rules made under the Act have been substantially complied with " and (b) "adequate precautions have been taken in the place in respect of which the licence is to be given, to provide for the safety of persons attending exhibition therein ". Sub-section (3) of Section 5 also empowers the State Government to issue direction 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.

It is required to be noted that the Act itself does not provide for any classification of cinemas, but Section 9 of the Act confers powers on the State Government to frame rules for carrying out purposes of the Act and particularly for laying down the terms and conditions and restrictions for grant of licences for exhibiting motion pictures and also for providing for regulation of cinematograph exhibitions for securing the public safety and for other matters. The State Government is also empowered to provide for penal consequences for breach of any rule.

12. In exercise of the aforesaid powers the State Government has framed rules called "The Bombay Cinema Rules, 1954". Rule 2(b) defines "Cinema" as under:

Cinema" means any place wherein an exhibition by means of cinematograph is given.

Rule 2(bb) defines "Drive in cinema" with which we are not concerned. Rule

2(ddd) defines "Janta Cinema" as under:

"Janta Cinema" means a cinema erected after the commencement of the Bombay Cinema (Gujarat Amendment) Rules, 1979 and located in a village or a town the population of which as ascertained at the last preceding Census is not more than 30,000.

Before advertng to the substantive rules, it is required to be noted that the categories of Janta Cinema and Drive-in-Cinema came to be introduced later on and that the original rules provided for only two categories, viz., permanent cinema and touring cinema. While the rules do not contain any express definition of a permanent cinema or a touring cinema, a perusal of the rules indicates that more stringent conditions are laid down for grant of licence for running a permanent cinema as compared to the conditions for grant of a touring cinema.

13. The Rules broadly contemplate the following categories of cinemas:

(i) Permanent cinemas in towns with a population of more than 30,000 -- they are required to comply with most stringent requirements regarding public safety, health-sanitation and conveniences:

Provided that cinemas in any area duly licensed for use for cinematograph exhibitions before the coming into force of the Bombay Cinema Rules, 1954 in that area, whether the population of the town is more than 30,000 or less - (e.g., the Rules came into force in Saurashtra and Kutch from March 1, 1963) are exempted from many of these requirements.

(ii) Janta Cinemas or cinemas constructed after 1979 in villages or towns with population upto 30,000 - they are also required to comply with most of the stringent standards applicable to the first category, but are granted a few relaxations in matters like telephone facility at the cinema hall.

(iii) Drive-in-Cinemas which are a separate category by themselves are covered by Chapter 1II-A.

(iv) Touring Cinemas which mean cinemas which are not permanent cinemas, Janta cinemas or Drive-in-Cinemas and which have come up after coming into force of the Bombay Cinema Rules. The requirements for these cinemas are much less stringent from the point of public safety as well as public health-sanitation and conveniences.

A perusal of the Rules discloses the aforesaid classification.

14. xxx xxx xxx xxx 15. Chapter VII contains the important provisions relating to cinema licence. Rule 102 provides as to the requirements for a valid application for cinema licence. Sub-rule (7) thereof provides that touring cinemas are not required to produce building permission, no objection certificate of a local officer of the local authority from the health point of view or the certificate regarding installation of a telephone in the cinema. Rules 103 to 107 are important and are required to be quoted insofar as the same are relevant:

103. Grant of Cinema Licence: The Licensing Authority on receipt of documents and certificate referred to in Rule 102 being satisfied that all the necessary Rules have been complied with may grant a Licence for a cinema to the applicant on such terms and conditions and subject to such restrictions as the Licensing Authority may determine. The cinema licence shall be in Form "E". Provided that a touring cinema licence shall not be valid beyond the district of issue and ordinarily touring cinema licences shall not be granted for places where there is already a permanent or quasi-permanent cinema but the Licensing Authority may in his discretion permit a touring cinema to operate at a place where there is already a permanent or quasi-permanent cinema on occasions such as fairs and melas or when the touring cinema exhibits film of a kind different from those exhibited by non-touring cinema, e.g., education films or where it caters for a different public.

(Emphasis supplied)

104. Power to refuse licence : The Licensing Authority shall have absolute discretion in refusing a Cinema Licence if the cinema appears to him likely to cause obstruction, inconvenience, annoyance, risk, danger or damage to residents or passers by in the vicinity of the cinema.

105. Death or disability of licensee -... ..

106. Duration of licence : A permanent cinema including a Janta Cinema or a Drive-in-Cinema may be licensed for any period not exceeding three years and quasi-permanent cinema, including a Janta cinema or a touring cinema may be licensed for any period not exceeding one year:

Provided that ? ? ? ? ? ?

107. Renewal of licences : The Licensing Authority may on application being made to him in that behalf renew the cinema licence for the requisite period subject to Rule 105 above. An application for the renewal of a licence shall be made in the manner laid down in Rule 102... ..

Provided that ? ? ?

Second "Provided further that the total period of the original licence proviso prior to and further renewals thereof in the case of a touring cinema 1986 amendment at any one place shall not exceed two years, provided further that the licence of a touring cinema at a place shall not be renewed, if in the meantime permanent cinema starts functioning at that place". Second Provided further that the licence of a touring cinema at a place proviso as per may be renewed, from time to time, until such time as a 1986 1986 amendment permanent cinema, a Janta cinema or, as the case may be a Drive-in-Cinema is opened, or allowed to remain open, at the place, in accordance with the provisions of these rules.

Legislative Object underlying Statutory Provisions and Meaning of word "Place"

16. A conspectus of the aforesaid legal provisions clearly indicates that the thrust

of the provisions of the Act and the Rules is to regulate the grant of licences for exhibiting motion pictures in such a manner as to ensure safety of persons attending such cinema shows and also their health and sanitary requirements and conveniences. However, many of these conditions are dispensed with in case of touring cinemas. A conjoint reading of the provisions of the Act and the Rules indicate that while the legislature and the rule-making authority were keen to lay down stringent standards for ensuring safety, sanitation and conveniences of the persons viewing the cinema shows, at the same time, the legislature and rule-making authority were also conscious of the fact that insistence on such stringent requirements would result into people in the far-flung remote rural areas being deprived of the opportunity of viewing commercial cinemas, which is a major source of entertainment, and also their being deprived of the opportunity of viewing scientific films intended for educational purposes and films dealing with news and current events and documentary films. With a view to harmoniously attain and balance the two apparently conflicting objectives the rule-making authority on the one hand provided for stringent conditions for permanent cinemas, but granted a concession or indulgence for the benefit of the people in the rural or far-flung areas by providing for grant of licences to run touring cinemas which can be run even with tarpaulin walls and in absence of various other safety measures and conveniences for the benefit of the audience. Since this was intended to be only a concession or an indulgence, it had to be a temporary or transient phase so that once a permanent cinema comes up in the town or village, the need for such touring cinema would not survive. As the word itself indicates "touring" cinema was intended to tour, and not intended to be a permanent cinema, but only a temporary substitute. It is for this reason that Rule 103 specifically provides that ordinarily touring cinema licences shall not be granted for places where there is already a permanent or quasi-permanent cinema but exceptions are provided for occasions like fairs and melas or for exhibition of non-commercial films.

17. The legislative intent that touring cinema is to be a temporary feature is clear not merely from the aforesaid part of Rule 103 but also from the second proviso to Rule 107.

Prior to the amendment of the Rules in 1986 the second proviso placed an embargo on the duration for operation of a touring cinema-maximum two years including renewals. Experience must have revealed, and the Court can take judicial notice of the fact, that in far-flung remote areas, permanent or Janta cinemas have not come up even after decades. Hence, through the Bombay Cinema (Gujarat Amendment) Rules, 1986 the rule-making authority merely removed the upper ceiling on the total period of two years for a touring cinema licence (including renewals) but continued the prohibition against renewal of licence for touring cinema if a permanent cinema starts functioning at that place.

If the word "place" in Rules 103 and 107 were to mean merely "site" or "place of exhibition" and not "village or town" as contended on behalf of the petitioner,

neither Rule 103 nor the second proviso to Rule 107 would make any sense whether prior to or after the 1986 amendment. If there was no legislative intent to prohibit a touring cinema continuing to run in a town where a permanent cinema comes up, there would not have been any objection to a touring cinema continuing side by side with a permanent cinema. The legislative intent is thus amply clear and beyond any shadow of doubt that the word "place" in Rules 103 and 107 means a town or an area and not a site or place of exhibition.

Is this interpretation inconsistent with Fundamental Right under Article 19(1)(g)?

18. The aforesaid discussion in para 16 also reveals that the provisions for granting licence to run a touring cinema is not made for the benefit of the person who is the proprietor of the touring cinema but as a relaxation, concession or indulgence for the benefit of the people in the far-flung remote areas or towns where there is no permanent cinema, Janta Cinema or Drive-in-Cinema. The moment any such cinema is opened in a town, the relaxation, concession or indulgence for permission to run a touring cinema is to be withdrawn upon expiry of the touring cinema licence which duration is not to exceed one year at a time (Rule 106). Occasions like fairs and melas may warrant more places for exhibition of cinemas but such occasions are bound to be infrequent and of lesser duration.

The right to carry on the business of exhibiting motion pictures is not such an absolute right that no restrictions can be placed on it. The fundamental right to carry on business conferred by sub-clause (g) of Article 19(1) is subject to the reasonable restrictions which may be imposed in the interest of the general public as provided in Article 19(2) of the Constitution. The person desirous of carrying on business of exhibiting motion pictures is, therefore, required to comply with the stringent requirements regarding having fire prevention and safety measures, adequate space and seating arrangements and all sanitary facilities and convenience for the persons coming for viewing the cinema shows. Hence, but for the Rules providing for grant of touring cinema, in the ordinary course no person could have obtained a licence to put up new cinemas to exhibit films without providing for all such safety measures and conveniences. As already indicated above, the concession or indulgence for permitting exhibition of films at a place not complying with all such stringent requirements was intended to be a mere transient concession which the legislature/ rule-making authority intended to be withdrawn or not to be renewed upon a cinema complying with the stringent requirements coming up in a particular town where the touring cinema was earlier permitted to be run under a licence. Hence, the interpretation canvassed on behalf of the respondent authorities is not inconsistent with the provisions of Article 19(1)(g) of the Constitution.

19. It is true that this interpretation may cause heart-burning to the petitioner or any other person running a touring cinema, but it cannot be helped because, as already indicated earlier, the concept of touring cinema was introduced as a temporary concession or relaxation for the benefit of the people in far-flung

remote rural areas not having a permanent/Janta Cinema complying with all the stringent requirements for safety, health-sanitation and conveniences of the persons viewing the films. Since there are still many such areas in the State, the petitioner is not left without new pastures.

Case Law

20. None of the authorities cited by the learned Counsel for the petitioner dealt with the issue involved in the present petition and, therefore, it is not necessary to discuss them in detail. The case of Krishna Cinema (supra) arose from a criminal prosecution where the Court naturally applied the rule of strict construction. The decision of the Delhi High Court merely refers to the definition of "place" in Section 2(c) of the Cinematographic Act, 1952, but the said decision was not concerned with the issues raised in this petition. The decision of the Supreme Court in the case of Utkal Contractors (supra) reiterating an important principle of interpretation of statutes enumerated in Maxwell, has already been relied upon as the foundation of this judgment.

Conclusion

21. In view of the above discussion, the inescapable conclusion is that the word "place" in Rule 103 and in the second proviso to Rule 107 of the Bombay Cinema Rules, 1954 means a town or a village and not a site or a place of exhibition. Hence, no fault can be found with the decision of the authorities in not renewing the petitioner's licence of touring cinema beyond January 31, 1998 as the permanent cinema of respondent No. 3 has already come up in the same town, i.e., Babra in Amreli District on October 10, 1997. The petition, therefore, deserves to be dismissed.

ORDER

The petition is summarily dismissed. Notice is discharged with no order as to costs.