
(1997) 12 AP CK 0071

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6509 of 1989

K. Seetharami Reddy

APPELLANT

Vs

Government of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 05-12-1997

Acts Referred:

Andhra Pradesh Cinemas (Regulation) Act, 1955 — Section 10(2)
Cinematograph Act, 1952 — Section 9
Constitution of India, 1950 — Article 14

Citation : (1998) 1 ALD 387

Hon'ble Judges : Bilal Nazki, J

Bench : Single Bench

Advocate : Mr. Syed Shareef Ahmed, for the Appellant; Government Pleader for Home, for the Respondent

Judgement

1. The facts leading to the filing of this petition are:

The seating capacity of Gagan Mahal talkies was reduced from 759 of 630 seats on 2-8-1986. For incorporating the reduced seating capacity in the "B" Form licence, the licence had been obtained from the licensee. On verification of licence it was found by the respondents that licensee had interpolated reduction of seats in the licence and he had substituted the figures of 759 by figures 544. A show cause notice was issued to the licensee as to why the licence of the theatre should not be revoked for making the interpolations in the "B" form licence. The licensee - Writ Petitioner filed his explanation on 9-4-1988 and the authority concerned heard him on 9-5-1988. In his explanation the licensee stated that he sought for reduction of seating capacity from 759 to 544 by an application in the year 1977 itself because certain amendment had been made in Entertainment Tax Act, 1939 by which slab system had been introduced for the theatres in the villages where the population was below 25000. According to the petitioner the amendment in the Entertainment Tax Act had adverse effect on business, therefore he sought for reduction of seating capacity in the year 1977. He further stated that Tax authorities had attached the furniture of the theatre for the

realisation of the tax due and therefore he was forced to confine to the seals for which furniture was available. He further stated that there was a dispute between the petitioner and some of the partners and by a Court Order the theatre was given in the possession of a Receiver and he received the "B" form licence from the Receiver after the Court case came to an end. The Receiver was one Mr. Purushotham Rao an Advocate. He was examined by the authorities. He stated before the authority that he had nothing to do with the licence. The concerned authority came to the conclusion that the interpolation in the licence was done by the petitioner, after considering all the objections raised by the petitioner and in terms of Section 10(2) of the AP. Cinemas (Regulation) Act, 1955 ordered that the licence of the Gagan Mahal be revoked with immediate effect. After this order was passed the petitioner filed an appeal before the Government which was decided on 20th April, 1989. The appellate authority after .. stating what had been stated by the petitioner in appeal and what had been stated by the Collector in his letter, without considering the rival contentions, agreed with the remarks of the Collector and held "The Government therefore see no reason to interfere with the order of the Licensing authority dated 21-6-1988". The appeal was rejected.

2. I have heard the learned Counsel for the Parties. Counter has not been filed.

3. The learned Counsel appearing for the petitioner made two arguments. He has stated that Section 10(2) of the A.P. Cinemas (Regulation) Act, 1955 is not at all attracted. In the alternative he states that, even if Section 10(2) was attracted, the Collector was not justified in awarding the maximum punishment.

4. To appreciate these two arguments it is necessary to go through Section 10 of the A.P. Cinemas (Regulation) Act, 1955.

"10. Power to revoke or suspend licence :-

(1) Where the holder of a licence has been convicted of an offence u/s 7 of the Cinematograph Act, 1952 (XXXVII of 1952), or Section 9 of this Act, the licence may be revoked by the licensing authority.

(2) If the licensing authority is satisfied, either on a reference made to it in this behalf or otherwise, that-

(a) a licence granted under this Act has been obtained by misrepresentation or fraud as to an essential fact, or

(b) the licensee has, without reasonable cause failed to comply with any of the provisions of this Act or of the rules made thereunder, or any of the conditions of restrictions upon or subject to, which the licence has been granted.

And then without prejudice to any other penalty to which the licensee may be liable under this Act, the licensing authority may, after giving the licensee an opportunity of showing cause, revoke or suspend the licence.

(2A) Where a licence is liable to be revoked or suspended under sub-section (2),

the licensing authority may, notwithstanding anything in sub-section (2) and for good and sufficient reasons to be recorded in writing, impose on the licensee a sum not exceeding rupees ten thousand by way of penalty in lieu of such revocation or suspension.

(3) When the licensing authority revokes or suspends any licence under sub-section (2), it shall do so by an order communicated to the licensee giving the reasons in writing for such revocation or suspension

(4) Any person aggrieved by the decision of the licensing authority revoking or suspending a licence under sub-section (2) or imposing penalty under sub-section (2 A) may, within such time as may be prescribed appeal to the Government, and the Government may make such orders as they may think fit:

Provided that no appeal against the decisions of the licensing authority under sub-section (2 A) shall be entertained unless the licensee deposits the sum of penalty specified in the decision aforesaid with such authority and in such manner as may be prescribed.

(5) The Government may stay the execution of any such decision, pending the exercise of their powers under sub-section (4) in respect thereof "

Section 10(1) lays down that a licence may be revoked by the licensing authority if the holder of the licence had been convicted of offence u/s 7 of the Cinematograph Act, 1952. Clearly the present case does not fall within this provision. Sub-section (2)(a) lays down that, if the licensing authority is satisfied that a licence granted under this Act has been obtained by misrepresentation or fraud the licence may be revoked. The petitioner's case does not fall even under this provision. The most important provision for the purpose of this Writ Petition is Section 10(2)(b) which lays down that a licence may be revoked or suspended if the licensee has, without reasonable cause failed to comply with any of the provisions of the Act or of the Rules made thereunder. The licence can be revoked or suspended if any of the conditions or restrictions upon or subject to which the licence has been granted are violated.

5. The learned Counsel for the petitioner states that neither in Section 10(1) nor in sub-section (2)(a) and (b) the present controversy falls. On the other hand, the learned Counsel for the respondents states that sub-section (2)(b) is of wider magnitude and wherever there is breach of conditions or restrictions the licence can be revoked. He states that, in terms of the licence granted to the petitioner the seating capacity was 759, reduction by interpolation to 544 would be a breach of the conditions of licence. This argument has force, because, otherwise the licensing authority will be left with no power to deal with persons who interpolate the conditions of the licence. Therefore, the argument made by the learned Counsel for the petitioner deserves to be rejected.

6. Coming to the alternative argument that the maximum punishment of revoking the licence could not be imposed on the petitioner in view of Section

10(2A). It is seen that Section 10(2A) lays down that a licence may be revoked if the tests laid down in Section 10(1) and (2) are satisfied. Sub-section (2A) is an exception to Section 10(2). There is no exception to Section 10(1). If a person is convicted for an offence u/s 7 of the Cinematograph Act, his licence has to be cancelled and there is no discretion with the licensing authority or appellate authority not to cancel the licence. But, if the competent authority comes to a conclusion that a licence need to be revoked or suspended in terms of Section 10(2)(a)(b), then, there is a discretion of awarding punishment not exceeding Rs.10,000/-. Now, the question would be, how is this discretion to be exercised by the competent authority once he comes to the conclusion that a licence needs to be revoked or suspended in terms of Section 10(2)(a) & (b); There are three punishments prescribed under sub-section (2) of Section 10. One is suspension of licence, second is revocation of licence and the third is penalty not exceeding a fine of Rs. 10,000/-It does not need much argument to infer that revocation of licence is the maximum punishment which can be given to a person under this Section. At this second stage the suspension may come and at the third stage, fine shall come. Sub-section (2A) states that if the authority concerned comes to a conclusion that licence needs to be suspended or revoked, he may impose fine not exceeding Rs. 10,000/-. From bare perusal of this provision one would come to the conclusion that, if the licensing authority wants to give lesser punishment, he will record the reasons for doing so otherwise maximum punishment i.e., revocation of licence or suspension of licence has to be given. There are no guidelines provided in the provision as to in which case licence shall be revoked and in which case licence shall be suspended. In these circumstances, it is necessary that the concerned authority should exercise their discretion judiciously and it must be seen from the context of the whole Section 10 that, reasons for awarding a particular punishment had always to be given. In other words it would mean that, when the licensing authority awards maximum punishment of revocation of licence, he should give reasons also as to why he was not awarding lesser punishment. This becomes particularly necessary because there are no guidelines provided for awarding either of the three punishments. It is on the sweet will of the concerned authority either to suspend the licence or to revoke it or to punish with a fine of Rs. 10,000/-. The matter receives importance in view of the fact that revocation of licence would permanently deprive the licensee of his licence whereas in suspension the deprivation of business shall be temporary and in case of fine there may not be at all any deprivation of business. Since three punishments have three different consequences, therefore, it becomes necessary that the authorities concerned should give reasons not only when they award the punishment of fine but also when they award the maximum punishment as to why they are not awarding lesser punishment or higher punishment, otherwise power itself would become arbitrary and unbridled and render itself to be violative of Article 14 of Constitution of India.

7. In the present case the only ground on which the licence has been revoked

was that, there was interpolation of the licence. It has also come in the evidence that for a long time the theatre and the licence were not in the occupation of the petitioner and they were in the occupation of a Receiver appointed by the Court. It is true that the Receiver has stated before the authority concerned that he had nothing to do with the interpolation But, because of the pendency of the Court case the licence might have changed many hands. Going through the orders passed by the Collector. I am of the view that ends of justice would be met if in this case a penalty of Rs. 10,000/- had been imposed on the petitioner theatre. The order of the Government had been passed without assigning any reasons.

8. For these reasons, I allow this Writ petition, set aside the orders passed by the Collector and the Government to the extent it has revoked the licence of the petitioner theatre. The petitioner is, however, punished with a fine of Rs.10,000/-. The fine amount shall be deposited by the petitioner within one month from today before the authority concerned. No order as to costs.