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**(2002) 10 BOM CK 0007**

**In the Bombay High Court**

**Case No :** Writ Petition No's. 5611, 6155 and 6156 of 2002

Kamlakant Udaibhan Singh and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

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**Date of Decision :** 24-10-2002

**Acts Referred:**

Cinematograph Act, 1952 — Section 10

**Citation :** AIR 2003 Bom 123 : (2003) 1 ALLMR 1197 : (2003) 4 BomCR 268 : (2003) 2 BOMLR 67 : (2003) 2 MhLj 284

**Hon'ble Judges :** C.K. Thakker, C.J.;Ranjana Desai, J

**Bench :** Division Bench

**Advocate :** N.P. Mishra and A.K. Prajapati, for the Appellant; J.S. Pawar, Addl. Govt. Pleader, for the Respondent

**Final Decision :** Allowed

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**Judgement**

C.K. Thakker, C.J.—Rule. Mrs. J. S. Pawar, Additional Government Pleader, appears and waives service of notice of rule on behalf of respondents. In the facts and circumstances, all the matters have been taken up for final hearing.

2. These petitions are filed by the petitioners for appropriate writs, directions or orders directing the respondents to consider the applications made by the petitioners and to issue licences to the petitioners for carrying on Video Games Parlours. Interim relief is also prayed restraining the respondents, their officers, servants and agents from preventing the petitioners from carrying on business of Video Games Parlours. Further interim relief is also prayed that during the final disposal of the petitioners' applications and for a period of three weeks thereafter, the respondents, their officers, servants and agents be restrained by orders of injunction from preventing the petitioners from carrying on the business of Video Games Parlours.

3. The case of the petitioner in the first petition, i.e., writ petition No. 5611 of 2002, is that he is running his business of Video Games Parlour at Bhayandar

since September, 2002. It is not even his case that before he started this business, he had obtained a licence. According to him, however, he applied for the licence, but so far, the application has not been disposed of and he has not been granted such licence. In the circumstances, he has approached this Court. Similar is the case in other petitions.

4. In view of the above averments and admitted facts, we will have to consider whether the petitions brought by the petitioners to continue business of Video Games Parlours, said to have been run by them without getting any licence, are maintainable and whether such relief can be granted. Likewise, we have to consider whether interim relief, as prayed by them that during the pendency and final disposal of the applications by the respondent-authorities, they should be allowed to continue the business, can be granted.

5. In our opinion, no such relief, as prayed by the petitioners, can be granted. When the law requires a person to obtain licence before he starts running of Video Games Parlours, it is a condition precedent and sine qua non for starting of activity. If an application is made by a person and it has been kept pending for unreasonably long period, it is open to such applicant to approach this Court by a writ of mandamus or any other appropriate writ, direction or order directing the respondent-authorities to decide the application in accordance with law. If the application is rejected, such person can approach this Court. But before getting licence or an order directing the authorities to take a decision one way or the other, the applicant cannot start running of Video Games Parlours. Hence, relief to run Video Games Parlours cannot be granted.

6. No doubt, our attention has been invited by the learned counsel to several orders passed by this Court and produced along with the petitions and more orders shown at the time of hearing wherein such relief was granted. Most of them are by single Judge, but two orders were passed by Division Bench in Writ Petition No. 4817 of 1987 dated October 6, 1987 and in Appeal No. 622 of 1983 decided on August 23, 1983. No reasons at all have been recorded as to how such relief can be granted in absence of licence.

7. The learned counsel relied upon a decision of the Supreme Court in *Murarilal Jhunjunwala Vs. State of Bihar and others*, and submitted that almost in similar circumstances, a similar direction was issued by the Apex Court,

8. In our opinion, however, the submission is ill-conceived and cannot be accepted. *Murarilal* was a case in exercise of criminal jurisdiction. In that case, the appellant was prosecuted for violating the provisions of the Bihar Trade Articles (Licences Unification) Order, 1984. The case of the prosecution was that though there was no existing valid licence, the accused carried on business and thereby violated the provisions of paragraphs 4 and 5 of the Licence Order. As observed in the judgment of the Apex Court, the accused had initially applied for a licence. The licence was granted to him and he was carrying on business up to 1983. In April, 1984, the Bihar Trade Articles (Licences Unification) Order was

brought into force. Consequently, the accused applied for the grant of new licence under the said order. Licence fee was also paid by him. and he was allotted licence No. 100/84. With the allotment of the new licence number, the accused was under the impression that he had valid licence all throughout. The Licensing Authority neither rejected the claim of the accused nor pointed out any defect in the application. The accused continued to apply for licence every year and also continued to pay licence fees. The authority also continued to accept applications as also licence fees. It, however, prosecuted the accused for carrying on business without licence. Hence, he approached the Court for quashing of proceedings.

9. Taking into account the above facts and circumstances. Their Lordships observed :--

Technically, the authorities may be justified in prosecuting the appellant for carrying on the business without obtaining the licence. But the facts of the case reveal that the appellant is not to be blamed. If there is anybody to be blamed in this case it is only the Licensing Authority who has failed to perform its statutory duties. The appellant has done all that he could do under the law. He has not been told at any time that he is required to do anything more than what he has already done. For successive four years the Licensing Authority went on accepting the application for licence with the necessary licence fees, and at no time it denied the claim of the appellant. Its silence seems to demonstrate the total lack of awareness to the rights of the appellant. In cover up its own inaction and lethargic attitude, it seems to have directed the prosecution of the appellant. The attitude of the Licensing Authority is beyond our comprehension. It is arbitrary on the fact of it and unjustified on every aspect of it. We fail to understand why the appellant should be prosecuted when he on the part has done every thing for obtaining the licence. The appellant was legitimately entitled to the licence which has been unreasonably withheld from him. It would be indeed wrong on the part of the Licensing Authority to prosecute the appellant.

10. In our opinion the ratio laid down in Murarilal would not apply to the facts of the present cases. Here, according to the petitioners, they had applied for licences, which are "first time" applications. At no point of time, licence was granted in their favour and this is not a case of renewal of licence or a licence under any law recently enacted. Moreover, the petitioners have already started their business without licence and they are running Video Games Parlours. Obviously, therefore, Murarilal would not help the petitioners. Their Lordships observed that once the licence was granted, the accused was under the bona fide relief that it would be continued. In the instant cases, the petitioners are yet to be granted licence. If the authorities would be satisfied that the applications were properly made and there was no objection in granting licence, it will be granted in their favour but till then, no business can be started in violation of legal provisions.

11. In our view, therefore, the relief, which has been prayed by the petitioners

either to continue to run Video Games Parlours or to restrain the respondent-authorities from continuing the petitioners to run their business cannot be granted. The said prayer is. hence, rejected. At the same time, however, when the applications have already been made, and the authorities have stated that they have received such applications, a limited direction can be issued to the respondent-authorities to take appropriate decision on such applications made by the petitioners as expeditiously as possible, preferably within eight weeks from today. Considering the fact that applications are pending, in our opinion, it would be in the interest of justice if we direct the authorities not to prosecute the petitioners for alleged violation of law till the applications have been disposed of. This is, however, on condition that the petitioners will not run Video Games Parlours. If the petitioners will run Video Games Parlours before getting licence, it is open to the respondent-authorities to take appropriate action in accordance with law.

12. Petitions are accordingly allowed. Rule is made absolute in each petition to the extent indicated above. No order as to costs.

13. Parties be given copies of this Order duly authenticated by the Sheristedar/Private Secretary.