

(1955) 11 AP CK 0018
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 55 of 1955

Karnati Rangaiah

APPELLANT

Vs

A. Sultan Mohiddin and Brothers and Others

RESPONDENT

Date of Decision : 08-11-1955

Acts Referred:

Cinematograph Act, 1918 — Section 4, 5, 5(3), 8

Citation : AIR 1957 AP 513

Hon'ble Judges : Subba Rao, C.J; Bhimasankaram, J

Bench : Division Bench

Advocate : C. Kondaiah and K. Venkataramaiah, for the Appellant; G. Suryanarayana and M. Seshachalapathi, Government Pleader for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : State of Punjab and Another Vs. Hari Krishan Sharma, AIR 1966 SC 1081 : (1966) 2 SCR 982

Bhimasankaram, J.—This is an appeal against the decision of our learned brother Umamaheswaram J., in W. P. No. 375 of 1955, declining to issue a writ of mandamus or any other appropriate writ restraining the District Magistrate, Anantapur, from issuing a licence to the first respondent u/s 4 of the Cinematograph Act, II of 1918 (hereinafter called "the Act").

2. The facts material for the determination of the questions of law raised before us are simple. The appellant is the proprietor of a theatre called "Vauhini Kala Mandir" in the municipal town of Tadipatri. He has a licence u/s 4 of the Cinematograph Act to exhibit cinema shows in that theatre. The 1st respondent purchased a building in 1949 in which cinematograph films were being exhibited upto the year 1940 under a licence till then in force. As a result of certain defects pointed out by the Executive Engineer such exhibition was stopped in the year 1940. But before the defects were rectified, the Government requisitioned the

building and handed it over to a local Co-operative Stores which was using it as godown till the year 1953. The building was however vacated by the Stores in that year and early in the year 1954, the 1st respondent applied to the local District Magistrate for the issue of a licence u/s 4 of the Act. As he received no reply, he presented a petition to the local Government on 29th May, 1954. The appellant who came to know of this filed a memo., dated 8th July, 1954, before the District Magistrate setting out his objections to the grant of a licence to the 1st respondent. The Government in G. O. R. No. 14, dated 12th January, 1955, passed the following Order;

"In the circumstances stated by the Collector of Anantapur in his letter, dated 3rd December, 1954, cited, the Government consider that a licence under the Cinematograph Act may be granted to the old theatre at Tadipatri belonging to Sri A. Suitan Mohiuddin and Brothers provided necessary repairs are carried out. The Collector is therefore requested to grant a reasonable time say three or four months to the management of the old theatre for carrying out the requisite repairs to bring the theatre upto the specification of the Cinematograph Rules."

Thereupon, the appellant filed a writ petition out of which this appeal arises for the relief above specified. He has imp leaded the State Government as the 3rd respondent. Our learned brother dismissed the application, and the petitioner has come up in appeal before us.

3. The main contentions of the appellant are three in number. In the first instance, he urges that, under the Act, the authority having power to grant licences is the District Magistrate and the local Government has no power to direct him to issue one, as they have purported to do in the above G. O. The material portion of the relevant sections are extracted below in order that this contention may be appreciated.

"Section 4:

The authority having power to grant licences under this Act (hereinafter referred as the "licensing authority") shall be the District Magistrate.

* * * *

5. (3) Subject to the foregoing provisions of this section, and to the control of the (Provincial Government), the licensing authority may grant licences under this Act to such persons as it thinks fit, and on such terms and conditions and subject to such restrictions as it may determine."

4. It is contended by the appellant that the power of control cannot be co-extensive with the power initially to grant a licence and that at any rate even assuming that the Government could direct the issue of a licence to a particular individual it could only do so after the District Magistrate had declined to grant one in the first instance. We cannot accept this contention. It is to be noticed that the Statute expressly provides that the grant of licences by the licensing authority to such persons as it thinks fit, is subject to the control of the State

Government, The power of control extends over the whole range of the power to grant licences and the word "control" has a very wide connotation. In our view, the Statute does not in any way delimit the ambit of controlling power. Such control may take the shape of either general or particular instructions. It cannot be said that the District Magistrate is the statutory authority solely entrusted with the power to grant or refuse a licence, as, for instance, was the case, in the statutory rules framed under the City of Bombay Police Act which were considered by the Supreme Court in *Commissioner of Police, Bombay Vs. Gordhandas Bhanji, (A)*. On an interpretation "of the relevant rules, the Supreme Court held in that case that the Commissioner of Police was the only person vested with authority to grant or refuse a licence for the erection of a building to be used for the purpose of public amusement and that the State Government had no power to interfere with that authority. The words in Section 5(3) "to such persons as it thinks fit" and "such terms and conditions, and..... ..such restrictions as it may determine" do not, in our opinion, necessarily, detract from the power of the State Government to give directions to the licensing authority in regard either to the "persons" or to the "terms, conditions and restrictions". This control over the exhibition" of cinematograph films is conceived in the interest of "safety, convenience, morality and welfare of the public", to use a phrase of the Supreme Court in the cited decisions, and as such made subject to the over-all supervision of the State Government. Further, in this case, on the facts, it is evident that the District Magistrate dealt with the matter at first. In a communication dated 3rd December, 1954, he informed the State Government that in the light of the instructions issued earlier, a licence cannot be refused to the 1st respondent merely on the ground that by issuing a licence the maximum number of permanent cinemas prescribed in an earlier G. O. issued by the Government would be exceeded--an objection which was raised before the District Magistrate by the present appellant. It was upon this communication from the District Magistrate that the Government passed the order now in question before us directing the grant of a licence to the 1st respondent subject to his carrying out the requisite repairs in order to bring the theatre upto the specification of the Cinematograph Rules.

5. The second contention on behalf of the appellant is that he should have had notice issued to him before a prospective rival theatre was granted a licence. It is admitted that there is no statutory provision for such notice. He however claims that he is entitled to it as a matter of natural justice. But we cannot agree. We cannot see why the State Government or the District Magistrate cannot exercise the power to grant a licence to a new entrant without notice to the other licensees. It is true that in one sense their financial interests might be affected by the grant of a licence to the proprietor of a new theatre. But that will be the case in any business where there is competition and no business man can ask that he should be protected from competition. The order now impugned does not affect the appellant's private rights or interests, except in the sense that its effect is that he will have a business rival. On the facts also we find that he had

actual notice of the 1st respondent's application and made his representation to the District Magistrate.

6. The third contention raised on behalf of the appellant is that the Government erred in interpreting their earlier orders as to the terms and conditions under which licences could be issued to a permanent cinema in a particular locality. It is stated in G. O. Ms. No. 2070, Home Department, dated 5th May, 1950, that the number of permanent cinemas should be regulated on the basis of population and that only one permanent cinema should be allowed to a place of population of 20,000--and Tadipatri is one such--while to places with population of over 20,000 and less than 30,000 one permanent cinema and one touring cinema may be allowed. There was a subsequent memorandum dated 20th February, 1951, which informed the local licensing authorities that the effect of the instructions in a memorandum, dated 5th September, 1950, is

"that no permanent cinemas whose construction started prior to 5th May, 1950, should be refused a licence merely on the ground that by issuing a licence, the maximum number of permanent cinemas prescribed in paras. 6-9 of G. O. Ms. No. 2070, Home, dated 5th May, 1950, for such a place would be exceeded."

7. It is argued that as the building now in question was being used only as godown when the present appellant started his own theatre and as it was not being used as a cinema house for more than 10 years, it cannot be described as "a cinema whose construction started prior to 5th May, 1950" within the meaning of the subsequent G. O. We do not think the contention is correct. It seems to us that clearly the building in question should be construed as a cinema whose construction started prior to the 5th May, 1950. (The word "Cinema" in this context should be understood as a cinema house or a theatre"). This building was constructed certainly as a theatre long before 1950. Even otherwise, there is nothing which prevents the Government from issuing directions at variance with their own prior G. Os., when such G. Os., do not constitute rules or regulations made under statutory authority. Section 8 of the Act no doubt enables the State Government to make rules for the purpose of carrying out effectively the provisions of the Act. But these G. Os. are not rules framed under that section but are simply "terms, conditions and restrictions" such as are referred to in Sub-section (3) of Section 5 of the Act. They need not be published in the Official Gazette as rules made u/s 8 nor do they have effect "as if enacted in the Act". They merely embody executive instructions in the exercise of a general power to control the grant of licences.

8. No other point has been argued before us. We may add that the District Magistrate has not, as a matter of fact, granted a licence yet in pursuance of the order now questioned. The Supreme Court stated in the decision cited above that even if the Commissioner of Police was the sole authority to grant a licence, they did not "mean to suggest that it would have been improper for him to take into consideration the views and wishes of the Government provided he did not surrender his own judgment". After all, the order merely says that he may issue

a licence. We are therefore satisfied that there is no substance in the contentions urged on behalf of the appellant and dismissed this writ appeal with costs (one set). Advocate's fee Its. 100.