

(1985) 07 KAR CK 0047

In the Karnataka High Court

Case No : W.P. Nos. 8551 of 1984 & connected matters

Mallikarjuna Gowda and Others

APPELLANT

Vs

Deputy Commissioner, Shimoga and Another

RESPONDENT

Date of Decision : 12-07-1985

Acts Referred:

Karnataka Cinemas (Regulation) Rules, 1971 — Rule 105

Citation : (1986) 1 KarLJ 353

Hon'ble Judges : K. S. Puttaswamy, J

Judgement

1. These cases had been posted before me to-day for final hearing. But, in all of them the respondents, though duly served, had remained absent and unrepresented. At my direction Sri M.R. Achar, learned Government Advocate takes notice for the respondents in all of them who is permitted to file his memo of appearance for them within one month from this day.

2. As common questions of law arise for determination in all these cases, I propose to dispose of them by a common order.

3. The petitions are holders of touring cinema licences issued by the District Magistrates of the Districts (DMs) under the Karnataka Cinemas (Regulation) Act of 1964 ("the Act") and the Karnataka Cinemas (Regulation) Rules, 1971 ("the Rules") for exhibiting films in touring talkies at the places mentioned in the respective licences. Before the expiry of their respective licences, the petitioners approached the DMs under Rule 105 of the Rules for re-grant of their respective licences annexing the certificates required by the rules. On those applications, the DMs in some cases granting time have directed the petitioners to change the roofings of their theatres by "light roof, "zinc sheets" or "asbestos sheets" roofs as a condition precedent to the consideration of those applications, the validity of which is challenged by them in these petitions under Article 226 of the Constitution.

4. While issuing rule nisi this Court had directed the DMs to consider the applications made by the petitioners without reference to the directions and orders

made by them and in compliance of the same their licences have already been re-granted.

5. The petitioners have asserted that the existing roofing of their theatres have been construed and maintained as required by the Act and the Rules and that they had also annexed the requisite certificates issued by the competent authority under Rule 97(1)(d) of the Rules. On this basis the petitioners have urged that the directions issued by the DMs to change the roofings of their theatres was unauthorised and unwarranted in law.

6. Sriyuths B. Veerabhadrappe and B.G. Sridharan, learned counsel for the petitioners contend that the directions and orders made by the DMs to change the roofs of the theatres is unauthorised and unwarranted in law.

7. Sri Achar in justifying the impugned directions and orders contends that they are appealable under Section 10 of the Act which legal remedy had not been availed by the petitioners on which ground alone, this Court should decline to exercise its extraordinary jurisdiction in their favour. In the very nature of things it is necessary to examine this later contention of Sri Achar first and then examine the merits if that becomes necessary.

8. In writ Petition No. 8551 of 1984 the District Magistrate, Shimoga has directed the petitioner in that petition to change the existing roofing to "light roof" as a condition precedent to the consideration of his application for re-grant. In all other areas, arising from the District of Mysore, the DM has issued a cyclostyled endorsement calling upon the petitioners to change their existing roofs to zinc sheets or asbestos roofs on or before 31-3-1985, failing which he has stated that he will not re-grant their applications. Even placing the most charitable construction on the orders made by the DMs it is not possible to hold that those authorities have rejected the applications made by the petitioners for re-grants.

9. Section 10 of the Act provides for an appeal against an order refusing to grant a fresh or a re-grant application only and not against all orders made under the Act and the Rules. On this conclusion itself the objection of Sri Achar cannot be upheld.

10. Even otherwise, the orders made are not cases of clear refusals to hold that the petitioners should have first availed the remedy of an appeal under Section 10 of the Act. In this view, also, I cannot uphold the objection of Sri Achar.

11. It is well settled that the existence of an alternative remedy is not a total bar for entertaining a petition under Article 226 of the Constitution and granting relief, if the Court is otherwise satisfied with merits. The existence of an alternative remedy is only one of the factors to be taken into consideration which does not touch on the jurisdiction of this Court to entertain a petition under Article 226 and grant relief if it is otherwise satisfied. On any view these are not fit cases in which this Court should direct the petitioners to avail the doubtful remedy of an appeal and then only approach this Court. For all these reasons, I

reject this preliminary objection urged by Sri Achar.

12. Sri Achar next contends that licensees of Mysore District had sought for time which had been granted by the DM, Mysore on which ground, this Court should decline to interfere with his orders notwithstanding any illegality in his orders.

13. Even assuming that every one of the facts stated by Sri Achar are correct, then also that does not take away the right of the licensees to challenge the directions of the DM. The time granted by the DM, Mysore cannot be read as the petitioners consenting to the earlier orders made or consenting to the impugned orders made by the DM, Mysore. For these reasons, I see no merit in this contention of Sri Achar and I reject the same.

14. As I have rejected all the preliminary objections urged by Sri Achar, it is now necessary to examine the merits, which I now proceed to do.

15. An application for re-grant of a touring cinema licence has to be made under Rule 105.1) of the Rules. Sub-rule (2) of Rule 105 directs the licensee to annex the certificates stipulated therein, one of which is a certificate from the area Assistant Executive Engineer in respect of the conditions of the existing building under Rule 91 of the Rules which is made applicable to such re-grants. Rule 91 of the Rules that is material reads thus:

"91. Conditions regarding building- (1) The building shall be provided on all its sides with an open space which in no part thereof shall be less than ten metres in width.

(2) The building shall have a road frontage on the public thoroughfare upon which the site of such building abuts.

(3) There shall be suitable means of entrance and exist for the public in such frontage.

(4) The eaves of the building shall have a height of not less than two and half metres".

Under this Rule and Rule 97(1)(d) of the Rules, before issuing his certificate the area Assistant Executive Engineer or at least his technical subordinate is expected to visit and inspect the building and satisfy himself that the same conforms with the requirements of the said Rule. When a licensee annexes a certificate issued by the area Assistant Executive Engineer under Rules 91 and 97(1)(d) of the Rules, one can reasonably expect that the touring talkies building of the licensee is a fit and suitable building for exhibition of films under the Act and the Rules.

16. Another aspect that requires to be noticed is that before issuing a fresh licence under the Act and the Rules, the DM should satisfy himself that the building has been constructed in conformity with the requirements of the Rules, which however, has to be done on the strength of the certificate issued by the area Assistant Executive Engineer, who as noticed earlier is expected to visit and inspect the building and certify its suitability or otherwise of the same.

17. What emerges from the above is that whenever an application for re-grant is made accompanied by a certificate issued by the area Assistant Executive Engineer under Rule 97(d) of the Rules, the presumption is that the building is fit and suitable for exhibiting films. But, that presumption cannot be treated as conclusive proof, which necessarily means that in a given case it is even open to the DM to refer the matter to a higher authority like the Executive Engineer or any other superior authority or personally inspect the theatre and satisfy himself that the certificate issued by the Assistant Executive Engineer is true and accurate and the existing building is fit and suitable for exhibiting films under the Act and the Rules. Unfortunately the DMs of Shimoga and Mysore evidently without noticing the true effect of Rules 105, 97 and 91 of the Rules and the certificates produced by the licensees have proceeded to assume that the existing roofings of the theatres or touring talkies of the petitioners are not fit and suitable for exhibiting films. If the DMs had examined the applications vis-a-vis the requirements of the Rules, as they were bound to, it is clear that it was not open to them to impose the conditions that have been imposed by them. On this short ground the orders of the DMs call for this Court's interference.

18. But, Sri Achar contends that the orders made by the DMs must be read as being satisfied that the existing buildings of the petitioners were not fit and suitable for running touring talkies and they should be construed as made in the interests of the public in exercise of the general powers available to them under Section 6 and Rule 93 of the Rules on which ground also this Court should decline to interfere with their orders.

19. What I have said earlier is also an answer to this contention urged by Sri Achar. Even otherwise it is difficult to hold that the DMs have genuinely applied their mind to the applications made by petitioners, the existing roofings and have reached a conclusion that they were not fit and suitable for exhibiting films.

20. All that can be said is that the DMs seem to be obsessed with the idea that the existing roofings should be replaced by "light roof", without any doubt, a vague term, or zinc sheets or asbestos roofings. All matters have to be regulated in conformity with the Act and the Rules and not on the basis of personal opinion one may have on a particular matter. When the law regulates a particular matter, the law itself is the best guide and an authority is required to regulate the matter only in conformity with the law and not in conformity with one's own personal opinion of the situation, however suitable or desirable that may be. For all these reasons, I see no merit in this contention of Sri Achar and I reject the same.

21. For purpose of Part-IV Chapter XII of the Rules "Touring Cinemas" a building includes any booth tent or similar structure (vide Rule 89(1) of the Rules). The inclusive definition of the building naturally extends the meaning of an ordinary building which includes a permanent building.

22. Almost as a general rule touring talkies are generally located and operated except in exceptional cases in temporary buildings of coconut palm roofs

popularly called as "thatti type". Not unnaturally, to meet the special requirement of touring talkies or temporary theatres Rule 93 has made special provision for the same and that Rule that is material reads thus:

"93. Licence not be granted in certain circumstances: A licence shall not be granted if the building is constructed in whole or in part of a material which, in the opinion of the licensing authority, is so, inflammable as to be a source of danger to public or is dangerous otherwise to any other nearby building".

This rule requires that the building as defined in Rules 89(1) of the Rules is constructed with material that is not so inflammable as to be a source of danger to the public or is dangerous otherwise to any other nearby building. The fact that the existing building is of a "thatti type" does not necessarily mean that it is so inflammable as to be a source of danger to the public or is dangerous otherwise to any other nearby building. Whether an existing building falls within the mischief of that Rule or not is a question of fact, which must necessarily be decided on the facts and circumstances of each case. What follows from this is that there cannot be a hard and fast rule and the DMs as a rule cannot call upon the licensees to change their existing roofings to "light roof" or "roofings with zinc sheets or asbestos sheets as if that is an imperative requirement of the Act and the Rules. On this ground also, the impugned orders call for my interference.

23. Whether any of the existing buildings of any of the petitioners satisfy the requirements of the Act and the Rules or not and whether any of them call for a replacement or alteration has necessarily to be examined and decided by the DMs on an examination of the fact situations of each theatre only and it is undoubtedly open to the DMs to exercise that power in conformity with the Act and the Rules.

24. Before parting with these cases, it is necessary to point out that this Court in Writ Petitions Nos. 8569 to 8589 of 1984 and connected cases (Sujatha Touring Talkies and other v. The State of Karnataka and others) decided on 28-6-1985 has recently upheld the validity of Rules 96(5)(5A) and 107 (1)(a) of the Rules and this order must only be read as consistent with that order and not expressing a different opinion on any of the matters expressed by the Division in those cases.

25. In the light of may above discussion, I hold that the impugned orders are liable to be quashed: i, therefore, quash the impugned orders. Rule issued is made absolute in ail these cases. But, in the circumstances of the cases, I direct the parties to bear their own costs.