
(1989) 04 AHC CK 0024
In the Allahabad High Court
Case No : Writ Petition No. 3131 of 1986

Meera Srivastava & Another

APPELLANT

Vs

State of U.P.& others

RESPONDENT

Date of Decision : 26-04-1989

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1989) 04 AHC CK 0024

Hon'ble Judges : U.C.Srivastava, J and S.H.A.Raza, J

Final Decision : Allowed

Judgement

1. Refusal of the opposite parties to sanction Grantsinaid to the Cinemahall constructed and run by the petitioners on the ground that sanction for the same was granted before the cut offdate and that its construction was completed after the cutoffdate is subject matter of challenge in this writ petition.

2. The petitioners are running a Cinema Hall in the name and style of Meera Chitra Mandir, in the city of Hardoi (U. P.) having a population of 65,000 in the year 1974] For the construction of the Cinemahall, the petitioners moved an application to the District Magistrate, Hardoi on 19th May, 1981 for grant of permission to construct a new Cinemahall building. The application was accompanied with three sets of proposed plan of Meera Chitra Mandir. The District Magistrate, Hardoi vide order dated 1051982 accorded his approval and the permission was 10 remain valid for a period of one year, i.e. upto 951983. It was also stipulated that the construction shall be made strictly in conformity with the plan and specifications as approved by the Executive Engineer, Provincial Division, P.W.D. Hardoi. On 1161982 the petitioners moved an application before the District Magistrate, Hardoi to the effect that although they had started work within one month but the rainy season will create hurdle in the construction of the building, and, as such, full fledged work will start after the rainy season. As the cinemabuilding could not be constructed because, according to the petitioner, there were some doubts about the feasibility of the project, the petitioners again

applied for the grant of permission for construction of cinema hall on 2041983. It seems that the petitioners in the application mentioned that they have not been able to get loan from the Bank. The Bank of India, Hardoi Branch vide letter dated 1941983 addressed to the District Magistrate, Hardoi informed that the matter of grant of loan for construction of Meera Chitra Mandir was under active consideration, as such, the validity of the period may be extended. The District Magistrate, Hardoi granted permission to construct the cinema building vide order dated 2541983 and the cinema hall building was to be constructed by 10111983. According to the petitioner, they could not start actual construction as there was some doubt about the feasibility of the project.

3. In the month of September, 1983 a news item was published in the newspapers that the State Government in order to encourage construction of permanent cinema halls shall give grantsinaid to the cinema halls constructed between 111983 and 31121985 and it shall be given to the cinema halls constructed in small districts and towns. The grantsinaid was to be paid for four years and the way in which was to be paid was also announced. The petitioners found that now the construction of cinema hall will be financially viable, as such, the petitioners again moved an application to the District Magistrate, Hardoi stating therein that constructions have been started and are in progress and one year's time be granted for construction of the Cinema hall upto 10111984. It is thereafter that construction of the cinema hall started and from the report of the inspector who made inspection under instructions of the District Magistrate, Hardoi, it was found that only bricks and ironrods and sand etc. have been collected, but the foundation work had not started and the material had been collected. It was thereafter that the District Magistrate, Hardoi granted the above mentioned extension vide order dated 1111983, taking into consideration the recommendations made by the Bank authorities. The extension was granted with the rider that in case satisfactory progress will not be made within two months and the petitioners would not inform him about the progress so made, the permission so granted will automatically stand cancelled. According to the petitioners the construction started in the month of November, 1983 but as it was not likely to be completed by 1111984 they moved another application for extension of time for construction of the cinema hall and the district Magistrate, Hardoi extended time upto 2821985. The petitioners applied for grant of licence under the U.P. Cinemas (Regulations) Act and the same was granted by the District Magistrate, Hardoi vide order dated 14th March, 1985. The opening ceremony of the Cinema hall was performed on 2821985 and the petitioner started exhibiting cinema with effect from 131985.

4. It was thereafter that the petitioners moved an application for sanction of grantsinaid to the State Government on 2541985. It was rejected by the State Government vide order dated 1191985. The petitioners again approached the State Government to reconsider the application and this application was also rejected on 13121985. The application of the petitioners was rejected on the ground that the conditions laid down by the State Government have not been

fulfilled. Although two orders were passed by the State Government rejecting grant of grantsinaid but no reason whatsoever for the same has been given. These orders passed by the State Government have been challenged in the present writ petition.

5. In G.O. Dated 1791983, a copy of which has been annexed as Annexure No. 8 to the writ petition, it has been provided that the Cinema halls constructed after 111983 and completed before 31121985 will be entitled for the grantsinaid. It has further been provided that grantsinaid will be payable only to newly constructed cinema houses and the rates of admission including the tax should not be more than Rs. 2.50. It has further been provided that grantsinaid will be payable only to the Cinema hall who have produced application for approval of site plan on or after 111983.

6. In the counter affidavit it has been stated that the benefit of grantsin aid was to be given to those cinema halls which were constructed between 111983 and 31121985 with the condition that the application for approval of site plan should be presented on or after 111983. It has also been stated that the petitioners had applied for approval of their cinema hall site plan on 1951981 but their site plan was actually approved on 1051982 and the construction of the cinema hall building too had started in June, 1982 much before the issue of the Government Notification dated 1791983.

7. In this case it is to be seen that the application for sanction was given on 195198I and sanction was granted which was to remain valid upto 10th May, 1982 and whereafter it was to lapse, but thereafter it was extended and was to remain valid till 951983. Till then no constructions were made. Again application for permission was moved on 2041983 upon which permission was granted and was to remain in force till 10th November, 1983 and apparently even till then, no construction were made. An extension granted to save lapse of any permission or sanction tantamounts to grant of fresh sanction or permission. The extension of sanction to a plan for construction of cinema on 25th April, 1983 would be deemed to be grant of fresh sanction which was to remain valid for the period it was extended. In the instant case it would be deemed that site plan was approved on that date viz. 111983. It would be like renewal of fresh licence which amounts to grant of fresh licence to carry out certain work, trade profession, business etc. In this view the extension to sanction plan after 111983 to the public cinema meant moving of application and grant of sanction after 111983.

8. Even if for arguments" sake it is assumed that the application was given prior to 111983, the contention on behalf of the petitioner that this cutoffdate was arbitrary and violative of Article 14 of the Constitution of India is not without substance. Such a cutoffdate for purpose of grantsinaid according to the petitioner, does not satisfy the twin test of Art. 14 of the Constitution of India as enunciated by the Hon"ble Supreme Court of India.

9. In *D.S. Nakara & others v. Union of India* (AIR 1983 Supreme Court 130) introducing an arbitrary eligibility criteria, 'being in service and retiring subsequent to the specified date' for being eligible for the liberalised pension scheme and thereby dividing homogeneous class, the classification being not based on any discernible rational principle and being wholly unrelated to the objects sought to be achieved by grant of liberalised pension and eligibility criteria devised being thoroughly arbitrary, the eligibility for liberalised pension scheme of 'being in service on the specified date and retiring subsequent to that date' in the memoranda was held to be violative of Art. 14 of the Constitution. In *Indravadan H. Shah v. State of Gujarat and another* (AIR 1986 SC 1035) the rules were held to be arbitrary and irrational inasmuch as there was no nexus to the object sought to be achieved by introducing the age restriction in regard to appointment of Assistant Judge by promotion from amongst members holding posts of Civil Judges (Junior Division) and those in the cadre Civil Judges (Senior Division) whose names were entered in the Select List. This was held after noticing that the post of Assistant Judge as well as District Judge belong to the Senior Branch of Gujarat Judicial Service, yet in the cadre of District Judge no such age bar was introduced. In *R.L. Marwaha v. Union of India and others* (1987) 4 SCC 31) which was a case of fixation for grant of pensionary benefits, it was held:

'In the absence of any acceptable explanation, the classification of the pensioners who were working in the government/autonomous bodies into two classes merely on the basis of the date of retirement must be held to be unconstitutional as it bears no nexus to the object to be achieved by the order.'

In the case *Uttar Pradesh Mahavidyalaya Tadarth Shikshak Niyamitikaran Abhiyan Samiti, Varanasi v. State of U.P. and others* (1987) 2 SCC 453), adoption of a particular date as cut off date for regularisation of service of ad hoc teachers was held not to be arbitrary, irrelevant and discriminatory as it was held that the same has reasonable nexus with the object sought to be achieved. It was held that the Legislature can enact such a cut off date. It was further held that those appointed prior to 3rd January, 1984 had legal sanction and, therefore, they constituted a distinct class.

10. In the instant case it has been noticed that fixing of the date 111983 upto 31121985, i.e. those who moved application for construction of cinema halls, they alone will be entitled to the grantsinaid, has no nexus with the object to be achieved with i.e. to provide incentive to new cinema halls in small cities and towns. Construction of a cinema hall depends on several factors and fixing of a particular date for giving grantsinaid obviously has no nexus with the object to be achieved. The Government cannot create a distinction between one class of citizens with other class of citizens in the matter of granting largess or licences. In this connection reference maybe made to the case *Ramma Dayaram Shetty v. International Airport Authority of India* (1979) 3 SCC 489 which was reiterated in various cases including *M/s Kasturi Lal Lakshmi Reddy v. State of Jammu and*

Kashmir and another, (1980) 4 SCC 1) wherein it has been held that in the matter relating to grant of largess, licences, lease, quotas, jobs or other benefits, the grant must satisfy the dual test of 'reasonableness' and should be in 'public interest'. In the instant case, the period prescribed is unreasonable and the date is arbitrary having no nexus with the object to be achieved. If fixing of a particular date does not satisfy the dual test of Article 14 of the Constitution, the same cannot be allowed to stand and grantsinaid is to be made available to those who had applied for construction of cinema hall notwithstanding the fact that the application for permission was moved before the date or fresh extension was granted may be in the name of extension. In these circumstances, the writ petition deserves to be allowed.

11. Consequently the writ petition succeeds and is hereby allowed and orders dated 11th September, 1985 and 13th December, 1985, contained in Annexure Nos. 9 and 10 to the writ petition are hereby quashed and a mandamus is issued directing the opposite parties to grant grantsinaid in favour of the petitioners and also to refund the amount of entertainment tax deposited by the petitioners.

12. There will be no order as to costs.

(Petition allowed)