

(2000) 07 CAL CK 0035
In the Calcutta High Court
Case No : M.A.T. No"s. 834 and 939 of 2000

Pulak Kumar Mondal

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 18-07-2000

Acts Referred:

West Bengal Cinemas (Regulation) Act, 1954 — Section 3, 4, 5, 5(1), 7

Citation : 107 CWN 413

Hon'ble Judges : Satya Brata Sinha, J;Hrishikesh Banerji, J

Bench : Division Bench

Advocate : Moloy Kumar Basu and Kishore Dutta, for the Appellant;Milan Chandra Bhattacharya, S.B. Bhunia, P.K. Pahari and Atarup Banerjee, for the Respondent

Judgement

Satya Brata Sinha, J.—The only question which "arises for consideration in these appeals which arise out of orders dated 22.02.2000 passed by a learned Single Judge in W. P. No. 20257 (W) of 1999 and W. P. No. 21804 (W) of 1999. is as to whether a cinema licence within the meaning of the provisions of West Bengal Cinemas (Regulation) Act, 1954. and West Bengal Cinemas (Regulation of Public Exhibitions) Rules, 1956, can be granted in the name of a Director of the Company. The appellant was the writ petitioner in W. P. No. 21804 (W) of 1999. He filed the writ application questioning the grant of cinema licence in favour of one Ram Sankar Das, a Director of Cine & Supply Corporation Private Limited. The matter came up before this court earlier in M.A.T. Nos. 3995 of 1999. 4287 of 1999 and 428 of 1999. One of the appeals being M.A.T. 3995 of 1999 was directed against an order dated 14.10.99 whereby and whereunder directions were issued upon the respondent authority to treat the writ petition as representation of the writ petitioner and to consider the same in accordance with law upon giving a hearing to the writ petitioner and the private respondents. The order dated 25.11.99 was passed pursuant to the said order relegating the parties to a suit for adjudication of the dispute. So far as the other appeals are concerned, the same were against the order dated 14.12.99, whereby and where

under interim order passed on 25.11.99 for maintaining status quo with regard to the cinema hall in question was directed to continue, whereafter on 17.12.99, a direction had been issued upon the respondent to give a hearing to the appellant herein.

2. The respondents herein had, inter alia, contended that the appellant having ceased to be a Director of the Company with effect from 2.9.96. had no locus standi to maintain the application. It is the further case of the respondents that as regards the dispute raised by the appellant herein vis-a-vis the Company, alternative remedies had been available by him before the Company Law Board and several litigations are pending.

3. A Division Bench of this court by a judgment and order dated 6.1.2000 held that Pulak Kumar Mondal had no locus standi to be heard in the matter. However, as the writ petition had been pending, the question as to whether the Director of the Company can be favoured with a licence under the provisions of the aforementioned Act and the Rules was left open. By reason of the impugned judgment, the learned trial Judge has decided the same in favour of the respondents holding :

"After considering the facts and circumstances of this case in my opinion the said Pulak Kumar Mondal has a right to challenge the validity of the appointment of Shri Ram Shankar Das before the appropriate forum, that point in my opinion cannot be agitated in this writ application. It further appears to me that the District Magistrate has a right to issue a licence u/s 5(1) until and unless he is satisfied that the rules made under the said Act have been substantially complied with. Further section empowers the licensing authority to grant licence under the provisions of the said Act and the rules framed there under to such person as the authority may think fit and on such terms and conditions as subject to such restrictions as it may determine and the terms and conditions laid down shall include the prescribing of such prices of demand as the licensing authority may determine.

It's a fact that the Company will be treated as a legal entity and an application can be made in the name of the Company but if a company empowers its Director in the meeting of the Board of Directors and resolve any Director to take such steps on behalf of the Company. In my opinion that is also valid that a Director can apply on behalf of the Company as an agent as the power has been delegated to him to take all steps on behalf of the Company by the Board of Directors.

Accordingly, such act on the part of the said Director cannot be treated as invalid and furthermore, the authorities has a right to grant licence after being satisfied themselves in accordance with law. So. in my opinion, Ram Shankar Das on these facts has a right to apply for licence until and unless the said resolutions are being challenged by Shri Pulak Kumar Mondal in any appropriate proceedings as the steps taken by Ram Shankar Das or the authorities cannot be said to be

invalid or inoperative at this stage. Accordingly, in my opinion Shri Ram Shankar Das has a right to apply for the licence and there is no violation of granting the licence in favour of Ram Shankar Das who is acting as the Managing Director of the said Company."

4. The resolution of the Company being dated 2.9.99 as has been quoted by the learned trial Judge reads thus:

The Directors in the meeting resolved that Shri Ram Shankar Das be and hereby authorized to take all steps for re-opening the Cinema Hall. He is authorized to contact with different government departments for re-opening the Hall and further he is authorized to sign, represent and do all sorts of work which is beneficial to the Company including the licence. It is further resolved that the shareholders be informed about the present situation of the Company and they should be informed that they should extend co-operation to Shri Ram Shankar Das for re-opening the Cinema Hall and also to obtain licence in his name on behalf of the Company."

5. Mr. Moloy Kumar Bose, learned counsel appearing on behalf of the appellant has raised a question that having regard to the definition of person as contained in Section 2(iv) of the 1956 Rules, a Director of a Company cannot be delegated with the power to be a licensee within the meaning of the provisions of the said Act and the Rules. According to the learned counsel, the learned trial Judge must be held to have erred in law, in as much as, he failed to take into consideration the effect of such a resolution, as in the event the Director of the Company is removed, the licence shall come to an end.

6. Mr. Bhattacharya and Mr. Bhunia, learned counsel appearing for the respondents on the other hand submitted that the appellant has no locus standi to maintain the said writ application. Section 3 of the West Bengal Cinemas (Regulation) Act, 1954 provides that save as otherwise provided in the said Act, no person shall give a public exhibition by means of a cinematography elsewhere than in a place in respect of which a license has been granted there under or otherwise than in compliance with any conditions or restrictions imposed by a license. Section 4 of the said Act provides that the District Magistrate within whose jurisdiction the place where the exhibitions, by means of cinematograph are proposed to be given is situated, would be the licensing authority. Section 5(1) mandates that the licensing authority shall not grant any licence unless he is satisfied that rules made there under are substantially complied with. However, subsection (2) of Section 5 enables him to grant a licence in favour of a person or authority, who to his opinion, is fit to be granted such licence, which may be subject to such restrictions and conditions as may be imposed. It is not in dispute that in terms of the provisions of the Companies Act, a company registered there under is a juristic person. It can sue and be sued in its own name.

7. Rule 2(iv) defines a "person" as meaning any adult male or female individual

and includes any company or association or body of individuals whether incorporated or not. The definition of "person" having used both the terminologies, the same must be held to be an exhaustive one. Rule 4 provides that any person desirous of building a permanent cinema house shall, before commencing construction thereof, make an application in writing giving all necessary particulars to the District Magistrate for approval of the proposed site and plan of the building. The question which may arise is that the person who can file such application must be a person having some interest in the land upon which the building is to be constructed. Sub-rule (2) provides for an enquiry in the matter. Sub-rule (4) of Rule 4 provides for grant of sanction of construction if the site is found suitable therefore. However, before grant of such construction, certain factors as enumerated therein are required to be complied with. Sub-rule (6) of Rule 4 reads thus :

"On completion of construction of a permanent cinema house to his satisfaction, the licensing authority may grant a licence for permanent cinema after he has ensured that the applicant has complied with these rules and has taken all precautions provided in the Schedule of conditions annexed to Form I (or Form I-A) appended to these rules so as to provide for the safety of persons attending exhibitions in the Cinema house."

8. A licence is to be granted in Form I appended to the said rules which contains various conditions therefore as would appear from Rule 7 of the Rules. Schedule appended to Form I provides for various conditions which are to be performed by the licensee alone. Rule 16 under Part D of the said Rules also provides for power upon the licensing authority to impose additional conditions. Rule 19 reads thus :

"19. Transfer of licence. - (1) Subject to the provisions of sub-rule (2) a licence granted under these rules shall not be transferable and shall be for the benefit of only the licensee.

(2) Where during the period of validity of a licence-

(a) the proprietorship of the business to which the licence relates passes from the licensee to any other person by reason of the death of the licensee or of a transfer effected by the licensee with the previous approval in writing of the licensing authority, or

(b) a Receiver appointed by a competent court takes possession of such business for management."

9. Section 7 of the Act provides for penalty for contravention of the provisions of the Act and the Rules framed there under. In terms of the said provision, a Company can also be punished. The import of the provisions of the said Act as also the Rules framed there under clearly go to show that the applicant must not only be a person who has an interest therein, but must also be a person who would be bound to carry out all the conditions and obligations imposed either under the provisions of the Rules or the licence issued. It may be that the District

Magistrate, having regard to the application filed might have come to a conclusion that there had been a substantial compliance of the Rules, but unfortunately it does not appear that while granting licence which had been granted in the name of Ram Sankar Das, as a Director of the Company, provisions of the said Act and the Rules have been complied with. Apart from the fact that the submission of Mr. Basu to the effect that once a Director is removed, the licence would come to an end. Director of a company cannot be said to have any interest in the assets thereof, as opposed to the concept of the partnership business. Even a shareholder has no interest in the assets of the company, but is only entitled to the share of profit earned by the Company proportionate to the number of shares held by him. The very fact that the Act and the Rules have defined the term "person" in an exhaustive manner, those who come within the purview thereof, would be the applicant. The learned trial Judge, however, was not correct in holding that by reason of the resolution alone, such a licence can be granted in favour of a Director, which would be opposed to the object and spirit of the provisions of the Act and the Rules. If the Company is the owner of the land and had been carrying on business of exhibition of cinematograph, it is the company alone who could file the application for grant of licence. However, having regard to the fact that the licence can be changed in the name of the company, we direct the District Magistrate to do so. As the District Magistrate had apparently committed a mistake in entertaining the application filed by the Director, the correction of such mistake would not amount to a transfer of licence within the meaning of Rule 19 aforementioned keeping in view the fact that interpretation of the statutory provision was not clear and, therefore, the District Magistrate had proceeded on a misconception. The Director of a Company being a licensee, thus cannot derive the benefit of the licence, in as much as, the business is being carried out for the benefit of the shareholders of the company and not for a particular Director.

10. These appeals are disposed of with the aforementioned directions. Xerox certified copy of the judgment be supplied on priority basis.

H. Banerjee, J.

I agree.