
(1968) 07 CAL CK 0026
In the Calcutta High Court
Case No : Civil Revision No. 1234 (W) of 1968

Purbachal Cinema

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 11-07-1968

Acts Referred:

Constitution of India, 1950 — Article 226
West Bengal Cinemas (Regulation of Public Exhibition) Rules, 1956 — Rule 4, 4(3),
4(4A), 4(5), 4(6)
West Bengal Cinemas (Regulation) Act, 1954 — Section 5(4), 9(2)

Citation : (1969) 2 ILR (Cal) 278

Hon'ble Judges : D. Basu, J

Bench : Single Bench

Advocate : Noni Coomar Chakravorty and B.N. Bajpayee, for the Appellant; Chittatosh Mukherjee, Tapash Chandra Roy, N.C. Chakraborty and Harashit Chakraborty, for the Respondent

Final Decision : Allowed

Judgement

D. Basu, J.—In this Rule the Petitioner, Purbachal Cinema, challenges the validity of the order passed by the Divisional Commissioner, Respondent No. 2, on February 8, 1968, which is at annEx. F to the petition (p. 33) on the ground, inter alia, that the order is without jurisdiction as the appeal in which this order was made was not maintainable under the law and this is the only question which has been agitated at the hearing of this Rule before me.

2. The Petitioner is the holder of an existing licence under the West Bengal Cinemas (Regulation) Act, 1954, and is carrying on the business in partnership to run the cinema known as Purbachal Cinema in the town of Katwa since 1948. Respondent No. 5 filed an application for having a second permanent cinema licence in the same town [vide annEx. A(I)] to which the Petitioner objected. This application was initially rejected by the District Magistrate by his order dated July 21, 1964 (vide annEx. A). The Respondent No. 5 preferred an appeal against the order to the Divisional Commissioner and that appeal having been rejected the

Respondent preferred a revision before the State Government. By that order of the State Government the District Magistrate was directed to reconsider in the light of the observations made in that order whether a second cinema licence could be granted in the town of Katwa (vide annEx. B)." After the case went back to the District Magistrate, eventually the District Magistrate passed the order at annEx. D by which he decided the question of having a second cinema house as against the objection of the Petitioner but observed that since the application for a second house by the Respondent No. 5 was made suo motu by the said Respondent, that is to say, without any invitation from the authorities there should be a public advertisement to invite further applications, and to consider the question collectively after fresh applications, if any, were received. The relevant observation of the District Magistrate in this order which is at annEx. D may be reproduced for the convenience of reference:

In place like Katwa which cannot afford to have many cinema houses, there is need for public advertisement through newspapers both in local and Calcutta dailies inviting applications for a second cinema house. This would provide greater opportunity for the district authority to issue licence to a person who can provide the maximum amenities in the proposed house for the benefit of the goers.... Through advertisements applications should be invited from persons willing to construct a second cinema house which should provide all. modern amenities to the cinema goers and, if possible, should have an air-conditioned house. The case of the present Petitioner be considered along with others after advertisement is issued through newspapers. The present Petitioner may also apply again on the basis of paper advertisement.

3. As against this order both the Petitioner as Well as the Respondent No. 5 went on appeal to the Commissioner. The Petitioner's appeal was rejected on the ground that the order of the District Magistrate in question was not appealable (vide annEx. E). But the Respondent's appeal was admitted on the finding that it was appealable because there was a virtual refusal of the Petitioner's application for permission to construct a cinema house, and on the merits it was held that the District Magistrate had not carried out the directions contained in the State Government's order and had adopted a middle course "to side-track the direction given by the Government". He, accordingly, referred the case back to the District Magistrate for final disposal of the application of Sm. De, Respondent No. 5, strictly in accordance with the State Government's direction both in words and in spirit. Whatever be the merits of the District Magistrate's order or of the Commissioner's order in question the only point that we have got to answer in the present Rule is whether the District Magistrate's order was appealable under the Statute and, if not, whether the Commissioner's order should be set aside on the ground of absence of jurisdiction. There is little doubt that the right of appeal is a creature of Statute and where the Statute does not allow any appeal, the intention of the Legislature to be resumed is that the order of the statutory authority should be final. The fact that the Petitioner also preferred an appeal whether under good or bad advice does not answer the question at law.

4. We have, therefore, to examine the relevant provisions of the Statute and the Rules made thereunder which are relied upon by Respondent No. 5 to maintain that the District Magistrate's order in question was appealable. Before advertng to those provisions it should be noticed that though the Act was passed for regulating cinemas in West Bengal by introducing a system of licensing and the provisions of the Act as they were originally passed refer to only such licence, when the Rules came to be framed, instead of laying down the procedure for obtaining a licence as referred to in Section 9(2)(a), the Rules, made by the State Government, divided the matter of licensing into two stages, it may be said that the Rules have introduced a pre-licence stage, namely, the stage of construction of a cinema house which, when completed, ushers in a stage of licensing. Rule 4 may, therefore, be divided on this line into two parts—the first part closing with Sub-rule (5) of that Rule, and Sub-rule (6), thereafter, deals with the matters of granting licence for a permanent cinema which was contemplated by the Act. In the case before me, the second stage has not been reached at all and we are on the first stage, namely, that of permission to construct a cinema house to be given to Respondent No. 5 who made an application in this behalf before the District Magistrate and to which objection was preferred by the Petitioner in terms of Rule 4(3). One of the most striking features of the system introduced by these Rules is that a person would be asked to invest a lot of money in making a structure which would be fit only for the purpose of holding a cinema, in anticipation of a licence to run his business in that structure which would not be permissible if the licence be not eventually available. It is not the place in this Rule to comment upon this feature of the Rules; but I have mentioned it so that the attention of the authorities might be drawn to this somewhat odd feature of the Rules which is not apparently conducive to the public interest in these days of economic distress.

5. As to the appeal ability, the relevant provision in the Act is Section 5(4)(a) which says:

Any person aggrieved by an order of a licensing authority granting or refusing to grant a licence or by the terms and conditions on which or the restrictions subject to which a licence is granted, may, within such time as may be prescribed, appeal?

(i) where the licensing authority is the District Magistrate of any district—to the Commissioner of the Division comprising such district....

If this provision stood as reproduced above no appeal would have patently been available because, as I have said at the beginning, the stage of granting or refusing of a licence has not been reached at all. It is at the stage of granting or refusing permission to construct a cinema house in which the impugned orders were passed. But by Amendment Act XII of 1965 there was an amendment of Sub-Section 4(a) as reproduced above to introduce the following words after the words?

to grant a licence"or by any other order of a licensing authority which is declared by rules made under this Act to be appealable.

In shortly by this amendment the rule-making authority was empowered to add to the list of appealable orders. The only addition that the State Government has so far made in these Rules is by the insertion of Sub-rule (4A) to Rule 4 of the Rules which reads as follows:

Any order of a licensing authority permitting or refusing to permit the construction of a permanent cinema house shall be appealable.

6. We have, therefore, to enquire whether by the order of the District Magistrate in question the Respondent No. 5 has been refused permission to construct a permanent cinema house. It has been vehemently argued and, I must say, creditably by Mr. Mukherjee on behalf of the Respondent No. 5 that there was a virtual refusal of the application of the Respondent No. 5 by the concluding portion of the District Magistrate's order by which he said that the present Petitioner may also apply again on the basis of the paper advertisement. It was argued that if the Respondent No. 5 were to make a fresh application there was an end of the application then pending before the District Magistrate. There are two answers to this contention.

The first one is that this last sentence should be read along with the sentence which is preceding it, namely, The case of the present Petitioner be considered along with others after advertisement is issued through newspapers.

From a reading of both the sentences together with the entire text of the" order it does not appear that the District Magistrate was saying that the pending application of the Respondent No. 5 would not be considered at all or that she would have no consideration as regards the permission to construct a cinema house unless she made a fresh application together with other invitees. What the District Magistrate meant by the last sentence of his order was that if the Respondent No. 5 so liked, she might have the opportunity of bringing another application, inserting newer facts or grounds to persuade the licensing authority to grant the permission.

7. Secondly, Sub-rule (4A) does not speak of the disposal of an application but granting or refusing to grant permission to construct a cinema house. By no means it can be said that the District Magistrate has refused permission to Respondent No. 5 to build a cinema house. The only thing that he has said is that the Respondent's case would be considered along with others who might apply in response to the advertisement proposed to be issued by the District Magistrate.

8. Whatever might be the demerits of the District Magistrate's order it is thus evident that it was not appealable under the Act and the Rules and that the Commissioner's order passed in the appeal granting relief to Respondent No. 5 was without jurisdiction.

9. The learned Advocate for the Respondent nevertheless argues that there are

certain preliminary grounds on which the Petitioner should not be granted any relief in this proceeding. The first is that the Petitioner has got no locus standi to move against the Commissioner's order inasmuch as the Petitioner was not a party to appeal before the Commissioner. But the criterion in the case of a proceeding for a certiorari is whether the Petitioner is likely to be affected or aggrieved by the order against which the writ is prayed for. The Petitioner was an objector to the application for permission made by Respondent No. 5 in accordance with the provisions of Rule 4(3) of the Rules and there is no doubt that the impugned order of the Commissioner overrules the objection to the grant of a licence for a second cinema house which was raised by the Petitioner. I have no doubt that the Petitioner has locus standi to move for certiorari. In a case of patent lack of jurisdiction the Court would interfere in certiorari even at the instance of a stranger. The reason is that it is the business of the State and so of the High Court to enforce public order in the administration of justice by whatever means it may be informed of its miscarriage: *Worthington v. Jefferies* (1875) 10 C.P. 379 (380). The words of Brett, J. in this case are worth reproduction?

If it is the absolute duties of the superior Court to enforce order on being convinced of breach of it by information given by the Defendant in the suit below, why should it be a less absolute duty if it is convinced of the same breach of the order by information given by the stranger ? The order is no less broken, the prerogative is no less invaded.

10. The next plea in bar raised against the Petitioner is that on February 16, 1968, the Petitioner made an application for injunction against carrying into effect the Commissioner's order in Civil Revision No. 81(W) of 1967 and it was only after a failure to get a favorable order on that application that the present petition under Article 226 of the Constitution was filed. It is argued on behalf of the Respondent that the present petition should be rejected in Limine on the ground of suppression of that fact in the present petition. No doubt, suppression of material fact is a preliminary ground for refusal by the Court to exercise its discretion in favour of a person who is so guilty, but it has also been established that such suppression must be of a material fact which, if disclosed, would have induced the Court not to issue a Rule in favour of the person suppressing the fact. The subject-matter of the present petition is the invalidity of the Commissioner's order on the ground of absence of jurisdiction ; that was not the subject-matter in Civil Revision No. 81(W) of 1967. The case of the Petitioner in Civil Revision No. 81(W) of 1967 was the invalidity of the order of the District Magistrate dated September 15, 1966, on the ground that there was no scope under the law for a second cinema house in the town of Katwa and it is in that connection that an interim relief was sought for to restrain the District Magistrate from acting in accordance with the directions of the Commissioner. The validity of the Commissioner's order itself was not challenged in that Rule. The instant Rule is, accordingly, supplemental to the Rule in Civil Revision No. 81 (W) of 1967. The disclosure of facts relating to the interim injunction in Civil Revision No. 81

(W) of 1967 could not, therefore, stand in the way of granting a Rule on the instant petition. The preliminary point in bar raised by Respondent No. 5 must, therefore, be rejected.

11. In the result, this Rule will succeed and is made absolute quashing the impugned order of the Commissioner at annEx. F to the Petitioner and restraining the District Magistrate, Respondent No. 3, from acting in pursuance of the said order of the Commissioner.

12. No order as to costs.

13. On the prayer of the learned Advocate for Respondent the operation of this order will remain stayed until the disposal of the connected Rules Nos. 3215(W) of 1966 and 81(W) of 1967.