

(1963) 04 CAL CK 0013

In the Calcutta High Court

Case No : Civil Revision Case No. 482 (W) of 1962

Ranjit Kumar De Chowdhury and Others

APPELLANT

Vs

District Magistrate, Nadia and Others

RESPONDENT

Date of Decision : 10-04-1963

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : 67 CWN 590

Hon'ble Judges : Banerjee, J

Bench : Single Bench

Advocate : E.R. Meyer, D.N. Das and Nirmal Kumar Ganguly, for the Appellant; J. Majumdar and Pradyot Kumar Banerjee for Respondent No. 1 and S.K. Acharya and Manas Nath Roy, for the Respondent

Judgement

Banerjee, J.—The town of Ranaghat, in the District of Nadia, has only one permanent Cinema show house. On or about October 11, 1960, the District Magistrate of Nadia, functioning as the Licensing Authority under the West Bengal Cinemas (Regulation) Act, 1954, invited applications for grant of licence for a second permanent cinema house at Ranaghat. The petitioners, respondent Nos. 2 and 3, and fourteen other persons made separate applications for grant of licence to open a second cinema show house. The petitioners selected c.s. plot Nos. 149, 150 and 155/21 as the site for construction of the cinema house. Respondent Nos. 2 and 3 proposed plots No. 4198, measuring about 15 cottahs, for construction of the cinema show house, if they succeeded in getting the licence. The petitioners allege that the plot proposed by respondent Nos. 2 and 3 was not an ideal plot for construction of a cinema show house, in that it was in the vicinity of a hospital, several places of worship and also very near two important road junctions.

2. On March 28, 1961, the District Magistrate of Nadia invited objections, if any, from the public to the sites selected for construction of cinema show house by the applicants for licence. The petitioners allege that a number of local people

objected to the construction of cinema house on c.s. plot No. 4198. The local Municipality also, on being consulted by the District Magistrate, recommended the plots selected by the petitioners and not the other plot selected by the respondent Nos. 2 and 3 as the most suitable site for construction of a cinema show house within the Municipal limits of Ranaghat.

3. Thereafter, the petitioners say, the Sub-Divisional Officer of Ranaghat considered the objections of the local people against construction of a cinema house on c.s. plot No. 4198. Subdivisional Officer expressed the following opinion (Annexure "A" to the affidavit-in-opposition filed on behalf of the respondent District Magistrate) :-

The objectors urge that the place being near a junction of the highway is not suitable for a Cinema House. The plot in question is no doubt situated by the side of B, H. No. 34 which normally bears very busy traffic. The objectors apprehend that owing to such congestion of traffic during Cinema times there is likelihood of accidents. There is not much traffic in Silver Jubilee Road but there is occasional congestion of traffic in the junction of Silver Jubilee Road and National Highway. But there is no record or evidence of any road accident to have ever taken place in the past.

There is a Siva temple in the Jail compound which is very close to the site. But this is not a temple in the real sense of the term. This is a private place of worship of Hindusthan warders of Ranaghat Sub-jail. No serious notice can be taken of this objection.

There is another Siva temple at Dakshinpara in Ranaghat town distance of which from the existing site of Cinema on Plot No. 4198 was once measured by the Block Overseer, Ranaghat Stage--I N.E.S. Block and the actual distance is 2730 ft. which is more than the prohibited distance.

There is a mosque a little way off from the proposed site. The measurement of the distance has been taken by Overseers. It appears that the distance diagonally from plot is 1033" ft. and by Pucca road via. S.D.O.'s Bungalow, Thana etc. is 1310" ft. If, however, the latter kind of measurement is accepted for the present purpose the statutory prohibition does not operate for practical purpose but otherwise it does operate.

4. A High Powered Site Selection Committee, the petitioner also say, consisting of the Additional District Magistrate, the Superintendent of Police and the Chief Medical Officer of Health, Nadia was also constituted by the District Magistrate to find out the most suitable site for construction of Cinema house. This Committee appears to have recommended invitation of fresh applications, being of the opinion that the sites proposed for the cinema house were in some way or other unsuitable.

5. On April 21, 1961, the respondent District Magistrate sent notices to the petitioners and other applicants to show cause why their applications should not

be rejected. He gave a hearing to all the applicants, on May 9, 1961, but did not pass any order on the applications until a year thereafter. On May 2, 1962, Mr. A.K. Dutta, the then District Magistrate of Nadia, made an order granting permanent cinema licence to respondent Nos. 2 and 3 and permitted construction of cinema house on c.s. plot No. 4198, subject to the condition that if the construction of the cinema house was not completed within 6 months, the permission granted would lapse, if not extended.

6. The petitioners allege that the said order although made on May 2, 1962, was not communicated to the petitioners before June 16, 1962, with the result that they could not appeal against the order to the Commissioner of Presidency Division, within the prescribed time limit. The petitioners further allege that the licence to respondent Nos. 2 and 3 had not been lawfully granted and need be set aside. On the aforesaid allegation they moved this Court, under Article 226 of the Constitution, praying for a Writ of Certiorari for the quashing of the order and for a mandate on the respondent No. 1 to withdraw and cancel the same and obtained this Rule.

7. In order to understand the points raised in this Rule it is necessary for me, at this stage, to refer to certain provisions of the West Bengal Cinemas (Regulation) Act, 1954 and the West Bengal Cinemas (Regulation of Public Exhibitions) Rules, 1956. The Licensing Authority, u/s 4 of the West Bengal Cinemas (Regulation) Act, is the District Magistrate of each district. u/s 5 of the Act :-

(1) The licensing authority shall not grant a licence under this Act, unless it is satisfied that--

(a) the rules made under this Act have been substantially complied with, and

(b) the prescribed precautions have been taken in the place, in respect of which the licence is to be given, to provide for the safety of persons attending exhibitions therein:

Provided that the licensing authority shall, before refusing to grant a licence under this Act give the applicant an opportunity of showing cause.

8. Section 7 of the Act contemplates penalties for contravention of the provision of the Act.

9. Rule 4(3) of the West Bengal Cinemas (Regulation of Public Exhibitions) Rules provides for restriction in regard to the location of cinemas and reads as follows:-

(3) Objections, if any, to the proposed permanent cinema house, shall be filed within the said period of thirty days. After the expiry of the said period of thirty days, the licensing authority shall, if any objection has been received within the specified period, appoint a date for the hearing of the objections locally, and shall either hold an enquiry himself or cause it to be held by some other officer deputed by him in this behalf. At the same time the licensing authority shall see that the following requirements are satisfied, namely:--

(a) that no permanent cinema house is allowed to be constructed within a quarter of a mile (or in Calcutta, within one hundred yards) from any hospital, place of worship, or junction of important roads and that in an area outside the local limits of a municipality, such a cinema house, if allowed to be built, is located near the shopping centre and not in a residential locality;

(b) that no additional permanent cinema house is allowed to be constructed-

(i) within municipal areas, towns or cantonments with a population of more than a lakh, within a quarter of a mile (or in Calcutta, within one hundred yards), or

(ii) in other municipal areas, towns or cantonments, within half a mile, or

(iii) other localities, within five miles--from an existing permanent cinema house;

(c) that no permanent cinema house is allowed to be constructed unless it has adequate space in its compound or in the vicinity for cars to be parked, queues of spectators to be formed and the public to pass without obstructing any public road or traffic.

10. Rule 5 of the said Rules invests the Licensing Authority with power to refuse license in public interest and is set out below:--

Nothing in these rules shall affect the discretion of the licensing authority to refuse a license to any applicant if, for reasons, to be recorded in writing, the licensing authority considers it necessary so to do in the public interest.

11. Bearing in mind the provisions of the Act and the Rules, hereinbefore quoted, I need consider the arguments advanced on behalf of the petitioner.

12. Mr. Meyer, learned Advocate for the petitioners made two points in support of the Rule. He argued in the first place, that plot No. 4198 was unsuitable for cinema house construction under the provisions of Rule 4(3) of the West Bengal Cinemas (Regulation of Public Exhibitions) Rules in more than one respect, in that the plot of land was,

(a) only 46 yards (137 feet) from the junction of the National Highway from Calcutta to Berhampore and the Silver Jubilee Road,

(b) Only 144 yards (432 ft.) from the public temple in front of the jail on C.S. Plot No. 4213,

(c) Only 327 yards (980 feet) from the public mosque on c.s. Plot No. 4273,

(d) only 334 yards (1000 feet) from the T.B. Clinic on C.S. Plot No. 4273.

(e) only 338 yards (1013 feet) from the public temple of Lord Siva near the Court compound on C.S. Plot No. 4285

And

(f) only 398 yards (1195 feet) from the junction of the Sub? Divisional Road and

the National Highway between Calcutta and Berhampore.

13. He contended that it was obligatory on the respondent No. 1 not to select any plot of land falling within the mischief of the said Rule. He contended, in the next place, that Mr. A.K. Dutta, the then District Magistrate of Nadia, did not act in a bona fide manner when he approved of c.s. plot No. 4198 and granted the cinema license to respondents No. 2 and 3.

14. In order to measure the force of the first branch of the arguments of Mr. Meyer, it is necessary for me to decide whether the provisions of section 5 of the West Bengal Cinemas (Regulation) Act, and of rule 4(3) of the Rules thereunder framed are mandatory or directory in nature. Mr. Jajneswar Majumdar, learned Additional Government Pleader, contended that the provisions for selection of cinema house site as in the Act and the Rules should be read as merely directory. He argued that wherever a public duty was imposed and the statute required that it should be performed in a particular manner or under specified conditions, such prescription should well be regarded as directory or recommendatory in all cases where injustice or inconvenience would result to others, having no control over the performance of the duties, by the nullification of any irregular action. Explaining the proposition further Mr. Majumder contended that the people of Ranaghat required a second cinema show house but could not dictate where such a cinema house should be set up and could not control the licensing Authority in the selection of sites. If the Licensing Authority erred in the selection of the proper site and if by reason of such error the site selection was liable to be set aside, the public requirement might be indefinitely delayed in fulfillment, to the detriment of public interest. That was the reason, he contended, why the conditions in the Act and Rules should be treated as merely directory and not mandatory. In my opinion, the argument of Mr. Majumder is unworthy of being sustained in the facts and circumstances of the case.

15. Law Reports are full of cases dealing with statutory provisions which are devoid of express statutory intention regarding the effect of non-compliance therewith. In some of them the conditions, forms, or other antecedent circumstances, prescribed by the statute, have been regarded as essential to the Act or thing regulated thereby and their omissions have been held to be fatal to the validity of act or the thing itself. In others, such prescriptions have been considered as merely directory the neglect of which did not affect its validity or involve any consequence, other than a liability to a penalty, if any, imposed. for breach (vide Maxwell "On Statute" --11th Edition P. 363).

16. Both sections 5 of the Act and rule 4(3) of the Rules use the mandatory expression "shall". In the case of (1) Dattatraya Moreshwar Pangarkar v. State of Bombay & Ors., (1952 S.CA. 526) Mukherjea, J., pointed out:--

The manner of expression is ordinarily a matter of form but whether a rigid compliance with a form is essential to the validity of an act or not depends upon the intention of the legislature.

17. In a much more recent decision of the Supreme Court in (2) *Banwarilal Agarwalla Vs. The State of Bihar and Others*, Das Gupta, J. pointed out as follows:--

As has been recognized again and again by the courts, no general rule can be laid down for deciding whether any particular provision in a statute is mandatory meaning thereby that non-observance thereof involves the consequence of invalidity or only directory, i.e., a direction the non-observance of which does not entail the consequence of invalidity, whatever other consequences may occur. But in each case the court has to decide the legislative intent. Did the legislature intend in making the statutory provisions that non-observance of this would entail invalidity or did it not? To decide this we have to consider not only the actual word used but the scheme of the statute, the intended benefit to public of what is enjoined by the provisions and the material danger to the public by the contravention of the same.

18. Keeping the above-quoted observation in mind, I need enquire what is the purpose of the West Bengal Cinemas (Regulation) Act. The scheme of the Act suggests that the object of the enactment is to prevent haphazard or mushroom growth of cinema houses without regard to public convenience, public safety or local amenities. Their location near hospitals may cause inconvenience to ailing patients. Their situation near places of public worship may offend public religious sentiments. Their situation on important road junctions or by the side of busy public thoroughfares may create traffic obstructions or cause road accidents. Under the scheme of the Act and the Rules, public objection, if any, and administrative convenience and inconvenience in respect of location of cinema halls at a particular site need be considered. It need further be seen that cinema houses are constructed and equipped with proper regard to public safety, convenience and sanitation. Rule 4 (3), which provides that cinema houses must not be constructed within a prescribed distance from any hospital, place of worship or junction of important roads, is intended to safeguard public interest and to avoid dangers which may befall by the contravention of the same. The pleasure that the people of a locality may derive by having cinema houses may be more than outweighed by the inconvenience and trouble they may cause, if started in an objectionable or inconvenient locality. Considering the aforesaid aspect, it appears to be reasonable that the provisions of section 5 of the Act and of rule 4(3) of the Rules should be treated as mandatory and not directory.

19. Mr. S.K. Acharya, learned Advocate for the respondents 2 and 3, strongly relied on the language of section 5(1) (a) of the Act and contended that even though the provisions of section 5 and of rule 4 (3) be construed as mandatory, they left some discretion in the Licensing Authority in that the Authority might take a substantial compliance with the statutory requirements as enough and was not compelled to insist upon a rigid observance thereof. Mr. Acharya is right in his contention that a substantial compliance with the provisions of the Rules is enough. But substance is that which constitutes the principal part. Therefore,

principally the requirement must be complied with, but a little variation may be allowed, say for example,, if a cinema house is to be located a quarter of a mile away from a hospital and if the distance falls short by a few yards, rule 4(3) may be taken to have been substantially complied with. But under the pretext of substantial compliance, the requirements must not be so far ignored as to make the prohibitions farcical or render them wholly nugatory.

20. I have, therefore, to see how far c.s. plot No. 4198 substantially satisfies the requirements of Rule 4 (3) of the West Bengal Cinemas (Regulation of Public Exhibitions) Rules. It appears from the report of the Sub-Divisional Officer, Ranaghat, (Exhibit "A" to the affidavit-in-opposition) that c.s. plot No. 4198 is near the junction of National Highway No. 34 (Calcutta-- Berhampore Highway) and Silver Jubilee Road. The distance is said to be only 46 yards (138 feet) from the junction (paragraph 2(a) of the petition). It further appears from the said report that the said plot is in close proximity of a Siva Temple within the jail compound. It also appears from the said report that the said plot is in the vicinity of a mosque, the distance between the two beings stated to be 1033 feet by diagonal measurement and 1311 feet by road. In the petition, however, the distance between the two is said to be 980 feet. The respondent District Magistrate, in his order (Exhibit "0" to the affidavit-in-Opposition) took the distance between the proposed plot and the mosque to be 437 yards (or 1311 feet), by road, that is to say, less than quarter of a mile by 9 feet only and expressed the opinion that the distance between the mosque and the proposed plot substantially fulfilled the provision of Rule 4(3). The District Magistrate took the distance between the mosque and the proposed plot of land via a road, having turns and bends. He should have measured the distance between the two in a straight line on a horizontal plane as provided for in section 13 of the Bengal General Clauses Act, 1899. Measured as such the distance between the mosque and the proposed plot of land reduces itself to 1033 feet (980 feet according to petition) that is to say, less than the required distance by 237 feet (340 feet according to the version in the petition). Further the District Magistrate did not consider the unsuitability of the proposed plot from the point of view of its proximity to a road junction and to a place of worship within the jail compound, excepting for comparison with other proposed plots. He imported other considerations also in favour of the plot proposed by respondent Nos. 2 and 3 and observed as follows:--

Taking into account the following facts, viz., that (i) Sri Ajit Kumar Pramanik and another have offered what is by far the most attractive site; (ii) that he has considerably more experience in the cinema exhibition line than any other applicant; (iii) that he has been successfully running a temporary cinema house at the site since about two years, (iv) that he has been giving a good yield of amusement tax revenue during the time that he has been operating; (v) that there are no law-and-order problem involved as the site is very near the Thana and close to the national highway on a comparatively open space; I consider that the site offered by them is the best available and the applicants are the best

available, party for running a permanent cinema house in Ranaghat town.

21. I have, therefore, to hold that the District Magistrate did not give full attention to the requirements of Rule 4(3) in respect of plot No. 4198. He considered only one out of the three objectionable features reported by the Sub-divisional Officer and was weighed by certain extraneous considerations hereinbefore quoted. In that he was wrong.

22. I now take up for considerations the remaining argument of Mr. Meyer, namely, that Mr. A.K. Dutt, the then District Magistrate did not Bonafide exercise his jurisdiction when he directed grant of license to respondents Nos. 3 and 4. The particulars of malafides are stated in ground No. 4 in the following language:-

(a) In or about the end of 1959 four applications had been made for a temporary indoor cinema in the town of Ranaghat; and of them one was on behalf of your petitioners and another from the Respondents Nos. 2 and 3. The said applications were sent by the Licensing Authority, the said Sri A.K. Dutt, to the Sub-divisional Officer of Ranaghat for enquiry and report. Pursuant to the said direction the Sub-divisional Officer made enquiries and submitted report; but curiously enough the report regarding the application of the Respondents Nos. 2 and 3 was caused to reach the hands of Sri A.K. Dutt first, whereupon Sri Dutt forthwith granted the temporary license bearing No. 1 of 1960, dated February 4, 1960, to the Respondents Nos. 2 and 3 in respect of the said C.S. Plot No. 4198 in the town of Ranaghat without even waiting for the reports on the other three applications and without considering them or hearing the three other applicants or asking them to show cause why their applications should not be rejected, that is to say, without complying with the requirements in the proviso to section 5(1) of the West Bengal Cinemas (Regulation) Act, 1954. An appeal against the said order being Appeal No. 219 of 1959-60, preferred by one of the applicants Sri Jagannath Ganguli, and a Civil Revision Case being Civil Rule No. 535 of 1960 issued on an application of your petitioners under Article 226 of the Constitution against the said order proved Infructuous as the period for which the said temporary license was granted expired before the said appeal and Civil Revision Case could become ready for hearing.

(b) Thereafter, the said Licensing Authority Sri A.K. Dutt granted a temporary license in respect of the said plot No. 4198, being license No. 10 of November 28, 1960, for a period of nine months from November 30, 1960. Such license was granted without issuing any notice inviting applications therefor, and thus without even giving any chance to other parties to apply for the same.

(c) Pending the decision about the grant of the complained of permanent license, the said Sri A. K Dutt invited applications to be submitted within June 7, 1961 for temporary licenses for the period from September 1961 to May, 1962 for cinemas in different places in the district including one in Ranaghat town. On May 20, 1961, the Repondents Nos. 2 and 3 applied for a temporary cinema license on the said C.S. Plot No. 4198. Many other persons were also applicants for the

said license. The Sub-divisional Officer of Ranaghat after necessary enquiries about all the said applications recommended only the site of one Sri Ajit Kumar De Chowdhury but by an order, dated September 2, 1961, the said Sri A.K. Dutt held that the said temporary license should be granted to the respondents Nos. 2 and 3 for nine months and directed the issue of such license. None of the applicants, except the Respondents Nos. 2 and 3 had been informed about the result of their applications. With ulterior motives the said license was not however issued, as at that time the Respondents Nos. 2 and 3 had actually been running on the said C.S. Plot No. 4198 a temporary cinema under the aforesaid license No. 10 dated November 28, 1960 referred to in subparagraph (b) above. The said order, dated September 2, 1961, was illegal and without jurisdiction being in flagrant violation of Rules 8(2) and 9(2) of the West Bengal Cinemas (Regulation of Public Exhibitions) Rules, 1956. In or about the second week of April, 1962, your petitioners were extremely surprised to know for the first time that a temporary license for a period of nine months effective from April 16, 1962 had been granted to the Respondents Nos. 2 and 3 by the following order of the said Sri A.K. Dutt:--

The temporary cinema license was not issued earlier. A temporary license for nine months only may be issued now to Ajit Kumar Pramanik and another.

The said order, dated April 2, 1962, is also illegal and without jurisdiction being in breach of Rules 8(2) and 9(2) of the said Rules.

(d) The very modus operandi of granting the aforesaid three temporary licenses in utter disregard of the relevant rules of the West Bengal Cinemas (Regulation of Public Exhibitions) Rules clearly speak of the favour illegally shown to the Respondents Nos. 2 and 3. On the first occasion license was granted even before receiving the report of, the Sub-divisional Officer on the other three applications and without hearing the said applicants, on the second occasion without even issuing any notice inviting applications and on the third occasion by utilising a previous order which had been passed when a temporary cinema was actually being run by the Respondents Nos. 2 and 3.

23. The particulars stated may show error of judgment but do not necessarily establish malafides. The choice of the plot of land proposed by respondent's No. 2 and 3 for Cinema house construction, however, may be criticised as improper choice. I, therefore, do not make much of this argument.

24. Since I am of the opinion that grant of license to respondents Nos. 3 and 4 had not been made after due consideration of the prohibitions under Rule 4(3) of the Rules, the order must be quashed. The respondent No. 1 must now consider the applications afresh according to law and pass appropriate orders.

25. Let a Writ of Certiorari accordingly issue quashing the impugned order. Let a Writ of Mandamus also issue directing the respondent No. 1 to do as hereby directed. The Rule is made absolute to the extent indicated above. There will be no order as to costs.