
(1985) 01 DEL CK 0028

In the Delhi High Court

Case No : Civil Writ Appeal No. 3499 of 1982

Ruchika Theatre Group etc.

APPELLANT

Vs

Delhi Administration etc.

RESPONDENT

Date of Decision : 07-01-1985

Acts Referred:

Constitution of India, 1950 — Article 19(1)
Delhi Police Act, 1978 — Section 28

Citation : AIR 1985 Delhi 324 : (1985) 27 DLT 453

Hon'ble Judges : S.B. Wad, J;Rajinder Sachar, J

Bench : Division Bench

Advocate : Mukul Rohatagi, Anil Kumar, Y.K. Sabharwal and M.M. Sudan, for the Appellant;

Judgement

Rajindar Sachar, J.

(1) This petition challenges the impugned order dated 11-2-1983 passed by the Deputy Commissioner of Police Licensing by which he refused to issue a license to the petitioner to perform or exhibit the play "Bhutto". This order is purported to have been passed in pursuance of Regulation 120 of the Regulations known as Licensing and Controlling places of Public Amusement (other than Cinemas) and performances for Public Amusement, 1980 (hereinafter to be called the Regulation of 1980) framed in exercise of powers u/s 28 of Delhi Police Act.

(2) The Petitioner Society No. I is registered under the Societies Registration Act styled as Ruchika Theatre Group and is engaged in staging plays for amusement and information of general public. The petitioner society decided to stage a play entitled Bhutto which is a satire on the would leaders and heads of government. Though apparently a sensitive topic yet a live democracy has to live with such freedom of expression.

(3) The petitioner society applied for exemption from entertainment tax. One of the conditions for obtaining grant of such a certificate is that it is on no profit

basis. Along with an application for exemption, the petitioner had submitted the script of the play. Evidently the entertainment tax officer, Delhi, saw no objection in the script because he granted such a certificate by his letter of 24-9-1982 and communicated it to the petitioner. The play was to be staged from 14th October to 16th October, 1982. However, on 12th October, 1982 respondents wrote to the Sri Ram Centre for Art and Culture authorities directing them not to allow the petitioner to stage the play as no permission has been obtained from the licensing authorities. This was the first information to the petitioner that any objection was being taken. He thereupon went to the Deputy Commissioner's office and came to know of the Regulations of 1980 and moved the application dated 12th October, 1982 seeking the grant of the necessary permission. One would normally have thought that as the play was to be staged on 14th October, 1982 some decision would be taken immediately; but that is not how the bureaucracy moves. That is why we find that on 13th October, 1982 the licensing authorities curtly told the petitioner that its application was being considered and he should not hold the play. To show its annoyance and power a further step was taken when the entertainment tax officer informed the petitioner on 13th October, 1982 that exemption already granted to him has since been withdrawn by the Administrator of Delhi. The Licensing authorities thus had without taking any decision apparently succeeded in their move namely not to permit the staging of the play. The matter was kept hanging and dealt with in a leisurely manner and ultimately the impugned order was passed on 11th February, 1983 by which the permission to issue a license to perform or exhibit the play has been refused. That is what has made the present petitioner come to this Court impugning the said order.

(4) Section 6 of Delhi Police Act, 1978 provides for the direction and supervision of the Police force in Delhi and empowers the Administrator to appoint a Commissioner of Police who shall exercise and perform such powers and duties and perform such functions as are specified by or under this Act. The result of Commissioner system is that in Delhi many of the powers and functions are performed by the police personnel, not a very comfortable situation. Section 28 of Delhi Police Act empowers the Commissioner of Police to make Regulations to provide for the various matters, amongst others, namely;

(5) Sub Clause (i) of Clause (y) of Section 28(1) provides for licensing or controlling in the interest of public order decency or morality or in the interest of the general public, theatrical or other performances for public amusement.

(6) Similarly Sub-clause (iii) of Clause(y) lays down for prior scrutiny of such performances and of the script in respect thereof, if any, and granting of suitability certificate Therefore, subject to conditions, if any, by a Board appointed by the Administrator for the purpose either for the whole of Delhi or for the area concerned.

(7) Members of the Board being persons who in the opinion of the Administrator.....possess knowledge of or experience, in literature, the theatre

and other matters relevant to such scrutiny, provision for appeal against the order for decision of the Board to the appellate authority. In pursuance of above said powers u/s 28 of Delhi Police Act Regulations of 1980 have been framed. Regulation 2(d) defines the Board to mean the Board appointed by the Administrator under sub-clause (iii) of Clause(y) of subsection (1) of Section 28 of the Act. Regulation 2(k) defines the Licensing authority to mean the authority competent to grant, suspend cancel or revoke No Objection Certificate" permission, licenses under Chapter Xiv of the Regulations. Regulation 194(d) in Chapter Xiv says that the Licensing Authority for the purpose of grant or cancellation of performance of license under Chapter IX shall be Deputy Commissioner of Police Licensing. Regulation 195 provides that appeals against the orders of the Licensing Authority : regarding refusal to grant licenses shall lie to the Additional Commissioner of Police (Licensing).

(8) Chapter IX deals with the performance licenses. -

(9) Regulation 116 says that no person shall hold a performance for public until he has obtained a performance license from the licensing authorities to hold such performance. Regulation 117 provides that application for performance license shall be made to the licensing authority and shall be accompanied by various requirements including amongst others in the case of performances which have written script a true copy of the certificate of suitability of the script from the Board. The petitioner's performance has written script.

(10) Regulation 126 provides that any person who desires to hold any performance shall apply to the Chairman of the Board for the grant of a certificate of suitability and even lays down the form in which the application is to be made.

(11) Regulation 128 empowers the Board that after considering the application it may issue a certificate of suitability in respect of such performance. or impose such conditions as may be specified in the certificate.

(12) Regulation 129 empowers to Board to refuse to grant a certificate of suitability in respect of any such performance if from the scripts submitted for scrutiny the Board considers that the performance is likely to amongst others would the susceptibility of any nation or community followers of any religion. .

(13) Regulations 127-A is as under : For the grant of suitability Certificate for the performances proposed to be held, the Administrator shall appoint a Board for scrutiny of performances, scripts etc. consisting of

(i) A representative of the National School of Drama. (ii) A representative from Sangeet Natak Academy. (iii) A representative of Sahitya Kala Parishad of Delhi Administration. (iv) A representative of Department of Cultural Affairs of the Central Government or Delhi Administration. (v) Art critics from two leading news papers/magazines. (vi) A representative of the Commissioner of Police.

(14) Regulation 118 provides that the Licensing Authority on being satisfied that

all the necessary regulations have been complied with may grant a performance license to the applicant.

(15) Regulation 120 empowers the Licensing authority that it may refuse a license to perform any or all of the plays, in case of the various eventualities mentioned therein including if it considers the play to wound the susceptibility of any nation or community /followers of any religion.

(16) Now the impugned order has refused to issue a license because according to the licensing authority having gone through the scripts of the play it is of the view that the play contains offensive references to the personalities which if allowed to be staged would wound the susceptibility of the nation.

(17) The petitioner has challenged the impugned order on various grounds. Amongst others he has challenged on the ground that the provisions of the Delhi Police Act and the Regulations of 1980, infringe Article 19(1)(a) and 14 of the Constitution. Objection is also taken to the absence of procedural safeguards on the ground that the matter has been left to the subjective opinion of the Deputy Commissioner of Police (Licensing) and also that the procedure denies the essential minimum requirements of natural justice and a right of hearing. Objection is also taken on the ground that there has been application of the authority by the licensing authority and decision has been made on extraneous grounds. An objection is also taken on the ground that the Police Act does not permit the respondents-police officers to act as a Censor Board. It is also objected that the respondent licensing authority being a quasi judicial authority should have passed a speaking order and in its absence the right of appeal is illusory and the whole order is vitiated. A serious objection is also taken to the Deputy Commissioner of Police acting as a Censor in the garb of a licensing authority.

(18) We did not ask the counsel for the petitioner to elaborate on these points because in our view the petition has to succeed on the first point argued before us, namely, that on Board having been constituted under Regulations 127A, no jurisdiction is conferred on the Licensing authority to invoke (he power of granting or refusing a performance license.

(19) Now it is indisputable that the right to stage a play is one of the facet and aspect of the freedom of speech and expression guaranteed as a fundamental right under Article 19(1)(a) of the Constitution. Evidently, Therefore, any provision or the implementation of Delhi Police Act or the Regulation of 1980 can only be upheld in so far as it imposes reasonable restriction on the exercise of the right of freedom of expression. It is equally well settled that any restrictions must satisfy the test of reasonableness, both as to substantive provision as well as to the procedural part. It needs to be emphasised that jurisprudentially speaking, law, in the sense of command to do or not to do, must be a reflection of the community's cultural norms, not the State's regimentation of aesthetic expression or artistic creation. Speaking generally, government prescribed

morality often turns out to be a remedy which aggravates the malady, (See. Raj Kapoor and Others Vs. State and Others,).

(20) Conscious that direct government interference in matters of art, when specially having the protection of fundamental right, must be the minimum, if not totally absent. Parliament has provided safeguard by requiring Bye laws to be framed for Constituting a Board whose function it is to have prior scrutiny of the scripts and for granting certificate of suitability, for the play. As we have seen Regulations of 1980 have been framed and a Board constituted under Regulation 127-A, for this very propose. Thus the Regulations provide for high powered Board to grant or refuse the certificate of suitability in respect of such performances vide Regulations 128 and 128 respectively. Regulation 118 requires the Licensing authority to be satisfied that all the regulations have been complied with before granting a performance license and one of the essential requirement for an application for performance license is that it shall be accompanied by a certificate of suitability from the Board. This means that if the Licensing Authority finds that no certificate of suitability has been obtained from the Board the application will be thrown out at the threshold in terms of Regulation 118, and the question of examining whether license should be refused because it violates the condition laid down under Regulation 120, will not even arise. Thus a very peculiar and unsatisfactory situation prevails in Delhi. No Board has been constituted under Regulation 127-A. It is so admitted in the reply, but it is said that the requirement of suitability certificate has been kept in abeyance due to administrative measure. We find the stand of Delhi Administration unacceptable. The Act has mandated by Section 28 to frame regulations for granting of suitability certificate by a Board to be appointed by the Administrator for the purpose. Even the experience and requirements for members of the Board are to be provided by Regulations. Rightly Regulation of 1980, framed with previous sanction of the Administrator constitute a high powered Board for the purpose of granting a suitability certificate. There is no provision in the Act which authorises any authority to suspend the operation and the functioning of Board. As a matter of fact a combined reading of the Act and the Regulation will show that the Constitution and the role of the Board is a very pivotal one. In fact the condition precedent for obtaining license for performance is the prior obtaining of suitability certificate from the Board. The Board is not a mere ornamental decoration dependent for its existence on the whim of the Administration. In the absence of the Board the power of Deputy Commissioner to grant or refuse license would be in serious jeopardy of being declared illegal as placing unreasonable restriction on the fundamental right to stage a play. The Board is deliberately constituted of persons familiar with different nuances and the standards of art, drama and culture. Granting of suitability certificate has been consciously left to the judgment of those familiar with the matters of art and culture. These matters are too serious and delicate to be left to the sole discretion of the law and order machinery represented by Deputy Commissioner of Police, which would be the position in the absence of the Board.

(21) As a matter of fact the contention of Mr. Rohatgi the learned counsel for the petitioner is that once a suitability certificate has been granted by the Board the duty of the Deputy Commissioner of Police is only ministerial and he has no alternative but to issue a license for performance. Though prima facie we find much for in such an argument we are not called upon to decide it in the present case because there can be no doubt that the licensing authority can only invoke his power to grant or refuse a license only after the written script has been examined by the Board with a view to see whether it violates any of the conditions mentioned in Regulation 129. The Board thus performs a vital function. Its strategic importance in the whole scheme of grant or refusal of performance license can neither be shut out nor underestimated. It must be remembered that Art, morals and law's manacles on aesthetics are a sensitive subject where jurisprudence meets other social sciences and never goes alone to bark and bite because State made strait-jacket is an inhibitive prescription for a free country unless enlightened society actively participates in the administration of justice to aesthetics. (See para 8 Supra).

(22) We cannot let our art and culture be molded by a helmet and baton culture. It is not sufficient to just provide the grounds on which licensing authority may refuse a license as per Regulation 120. Even if these conditions in abstract are unobjectionable the agency which has to take a decision must be properly equipped an officer of the police unaided by the Board (as no Board exists) would be totally unacceptable substitute and could not be permitted to lay down the parameters and constrict the broad sway of artistic imagination and sweep of plays and dramas. Many of the best masterpieces of the world in art and culture might have been annihilated if they had been subject to the ignorant and muscle oriented thinking and attitude of law enforcing machinery. The world's greatest paintings, sculptures, songs and dances, India's lustrous heritage, the Konaraks and Khajurahos, lofty epics, luscious in patches, may be asphyxiated by law if prudes and prigs and State moralists prescribe paradigms and prescribe heterodoxies. (See Para. 9 Supra). Even though we are not called upon to decide whether after a suitability certificate has been granted by the Board, the licensing authority could still refuse to issue a license, there is at least no doubt in our mind that in the absence of prior scrutiny by the Board and its opinion the licensing authority gets no jurisdiction to insist that any application be made to it for obtaining a license. The provision of a Board cannot be dispensed with. The power of the licensing authority is inextricably dependant on prior scrutiny by the Board. The certificate of suitability by Board represents the judgment of a body of persons particularly selected under the Act and Regulation of 1980 for the purpose of adjudging the suitability of a play and performance and that Judgment extends to a consideration of the same principles which are to be applied by the licensing authority. In the present case the reason for denying license is stated to be that if allowed to be staged it will wound the susceptibilities of a nation.

(23) Now the Board also is empowered to refuse to grant a suitability certificate

if it is of the opinion that it will wound the susceptibilities of a nation. Thus the parameter and the considerations which the board has to take into account when deciding whether to issue a certificate of suitability are in most of the cases the same which has to be considered by the licensing authority for granting or refusing a performance license. It is evident that the opinion of the board constituted as it is of experts and thus familiar with arts and culture must by its very nature command a greater respect than the mere ipse dixit or the subjective opinion of the police personnel. The suitability certificate by the board even if not infallible, would be a very relevant material, important on its aspect. Prima facie, it may be correct to say that if suitability certificate has been given by the Board, onus will be very heavy on the licensing authority to still refuse a performance license by putting forth the ground which had not found favor with the board. Thus if the Board does not find that the staging of the play would wound the susceptibilities of a nation, then barring a grave exceptional circumstances arising possibly due to the discovery of some important fresh material the Court would normally be reluctant to prefer the opinion of the licensing authority if the later was to hold that notwithstanding the suitability certificate having been given by the Board, the staging of play would wound the susceptibilities of a nation. We must remember that freedom of speech and expression must be treated as preferred freedom and any onslaught on it must be stoutly resisted. By not Constituting a board the respondent-Administration has thus denied a very important safeguard , a person like the petitioner who wants to stage the play. As no board has been constituted in Delhi it must inevitable follow that the licensing authority does not have any power to insist that application be made to it because the condition precedent to be able to make such an application is the obtaining of a certificate of suitability from the Board. But this requirement cannot be met because on Board has been constituted as required by the Act and Regulations.

(24) The Act and the Regulations must be interpreted and implemented in a harmonious way. As the whole scheme of licensing for performance require a preliminary examination and a suitability certificate by the Board the whole scheme of requirement of a license for performance must inevitably fall in the absence of a Board having been constituted. The result is that as in Delhi no Board has been constituted under the Regulation 127A and as long as that Board is not constituted the provisions of Regulation 128 requiring the licensee to obtain certificate of suitability for performing any play cannot be effectuated and implemented. Thus any person including the petitioner who wishes to stage play in Delhi is under no obligation in law to obtain or seek a license from the licensing authority and this position will continue so long as no Board is constituted under Regulation 127A. In the present case admittedly no board was constituted at that time when permission was refused nor any board has been constituted till now. The action of the respondent-Administration in purporting to debar the petitioner from holding and staging any play because no license has been given by the licensing authority was, Therefore, unauthorised and was

without any authority of law.

(25) In the circumstances the demand that the petitioner should have obtained a license was uncalled for and unauthorised. The impugned order holding that the petitioner cannot perform the play "Bhutto" because no license has been obtained being without the authority of law is hereby quashed.

(26) As a result, the petition is allowed as above with costs. Counsel's fee Rs. 1500.