
(1966) 11 P&H CK 0010

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 212 of 1966

Rudra Talkies and Others

APPELLANT

Vs

Prem Sagar and Co. and Others

RESPONDENT

Date of Decision : 16-11-1966

Acts Referred:

Constitution of India, 1950 — Article 14
Punjab Cinemas (Regulation) Act, 1952 — Section 10, 9
Punjab Cinemas (Regulation) Rules, 1952 — Rule 19(1)

Citation : AIR 1967 P&H 348

Hon'ble Judges : S.B. Kapoor, J;Gurdev Singh, J

Bench : Division Bench

Advocate : H.L. Sibal and G.C. Mittal, for the Appellant; D.N. Aggarwal, M.M. Punchhi and P.R. Jain, for the Respondent

Final Decision : Dismissed

Judgement

Gurdev Singh, J.—On 30th of October 1968, respondent No. 1, Messrs. Prem Sagar and Company, applied to the District Magistrate, Karnal, the licensing authority under the Punjab Cinemas (Regulation) Act, 1952, (Punjab Act No. 11 of 1952), hereinafter referred to as the Act, for permission to construct a cinema house outside the city of Thanesar on the road leading to Birla Mandir. On inspection of the site by the authorities it was found that it was low lying area, was only 130 feet from the centre of railway track and 500 feet from the local Arya High School. As Rule 19 (1) (a) (ii) of the Punjab Cinemas (Regulation) Rules, 1952, framed u/s 9 of the Act, hereinafter referred to as the Rules, provided that the site of a building licensed for cinematograph exhibition shall not be within a radius of one furlong (660 feet) from a recognised educational institution etc., the District Magistrate declined to grant the license by his order dated the (sic) of September 1964 (copy of which is Annexure "D" to Civil Writ No. 2819 of 1965 on the record.)

Aggrieved by this decision, Messrs. Prem Sagar and Company appealed under

Sub-section (3) of Section 5 of the Act, but the appeal was rejected as neither the licensing nor the appellate authority had any power to relax the provisions of Rule 19 (1) (a) (ii) of the Rules referred to above. Taking advantage of the provisions of Section 10 of the Act, which empowers the Government to exempt any premises intended to be used for cinematograph exhibition from any of the provisions of the Act or of any rule made thereunder, Messrs-Prem Sagar and Company moved the Government for exemption from the provisions of the rule relating to the distance between the proposed cinema building and an educational institution viz., Rule 19 (1) (a) (ii).

In this representation Prem Sagar, owner of the concern, stated inter alia that on the promulgation of the Gold "Control Order he had been thrown out of the jewellers" business, which he was previously carrying on, and had thus to engage himself in some other business to support his large family. He further pointed out that the cinema, known as "Rudra Talkies", which already existed in the town, was even less than 500 feet from the Gita High School. On due consideration of the matter, the Government by its order dated the 17th of September 1965 (copy Annexure "G" to the abovementioned writ petition) granted exemption to Messrs. Prem Sagar and Company from the provisions of Rule 19 (1) (a) (ii). Being thus faced with the prospect of a competing business, Messrs. Rudra Talkies, through their partner Rameshwar Dass Gupta, approached this Court under Article 226 of the Constitution for quashing the Government's orders exempting Messrs. Prem Sagar and Company from compliance with the provisions of Rule 19 (1) (a) (ii) of the Rules.

2. It was pleaded that the respondent-company could not be exempted from complying with the provisions of the rules regarding cinema buildings, which were mandatory, and the rule or provision of law under which the Government had granted exemption was itself ultra vires the Constitution of India as it contained no guiding principle for the grant or refusal of such exemptions, but gave unguided and uncontrolled power to the Government and was thus discriminatory and in conflict with the provisions of Article 14 of the Constitution.

The learned Single Judge, before whom the petition came up for hearing, besides observing that it was extremely doubtful if an executive order of this kind could be challenged by a writ petition, held that the petitioners were not entitled to any relief as the impugned order did not infringe any of their legal rights. The learned Judge further observed that it was for the Government to decide whether exemption should or should not be granted in respect of a particular site. The petition of Messrs. Rudra Talkies was accordingly dismissed, but the parties were left to bear their own costs.

It may be mentioned here that in the course of the proceedings, on the 4th of April 1966, an application under Order 1, Rule 10 read with Section 151, Civil Procedure Code, for adding them as petitioners in the case was made by three residents of Thanesar on the plea that their children were studying in the Arya High School which is at a distance less than the prescribed distance of 660 feet

from the proposed cinema building, and the construction of cinema on that site would seriously affect "the education and career of the children". This application was granted subject to just exceptions, but it appears that it was not even brought to the notice of the contesting respondents when the writ petition was finally disposed of. Aggrieved by the order of the learned Single Judge dated the 17th of May 1966, Messrs. Rudra Talkies and the three gentlemen who had applied for being impleaded as petitioners in the case and whose application had been granted subject to just exceptions, have come up in appeal under Clause 10 of the Letters Patent.

3. Mr. G.C. Mittal, learned counsel for the appellants, has contended---

(i) that the view of the learned Single Judge that the impugned order of exemption being of administrative and executive nature cannot be challenged by way of writ petition under Article 226 of the Constitution is not correct; and

(ii) that Section 10 of the Act, under which the exemption has been granted in favour of Messrs. Prem Sagar and Company, was ultra vires the Constitution as it gave arbitrary and uncanalised power to the Government, which can lead to discrimination violating the provisions of Article 14 of the Constitution.

4. In support of the first contention reliance is placed upon P.J. Irani Vs. The State of Madras, , wherein dealing with a similar objection to a petition for striking down the exemption granted u/s 13 of the Madras Buildings (Lease and Rent Control) Act, 1949, Ayyangar, J., delivering the judgment of the Court, observed as under:--

"The first point urged was that the order granting the exemption was an executive or an administrative order which was not amenable to being quashed by the issue of a writ of certiorari. We consider there is no substance in this objection. If the High Court were right in their view that the order of exemption was passed for reasons which did not fall within the purpose for which the power was conferred by Section 13 of the Act, the order itself would be one discriminatory of the second respondent as violating his Fundamental right to equal protection of the laws. In such an event Article 226 would certainly be available to set aside such an order which affected the fundamental right of the petitioner before the Court."

Proceeding further, his Lordship said:--

"Besides, even if the order did not violate Article 14, still if the High Court were right in the view that the same was beyond the powers conferred on Government by Section 18 of the Act, we see no substance in the contention that the Court lacks power under Article 226 to set aside an ultra vires order vitally affecting a person's right to statutory protection against eviction. We do not consider that immunity from interference by the Courts could be sought for orders which are plainly ultra vires merely because they were passed bona fide in the sense of being without indirect motive. Particularly so when the power of the High Court

under Article 226 of the Constitution is not limited to the issue of writ falling under particular groupings, such as the certiorari, mandamus, etc., as these writs have been understood in England, but the power is general to issue any direction to the authorities, viz., for enforcement of fundamental rights as well as for other purposes."

5. In the light of this dictum we have to examine the validity of the impugned order of exemption. The order of exemption, as has been noticed earlier, was passed by competent authority in exercise of its power u/s 10 of the Act, and it is not disputed that it in no way violates that provision. The only question that remains to be considered is about the constitutional validity of Section 10 which has been assailed on behalf of the appellants on the ground that there is nothing in this section to indicate the circumstances in which the power conferred by this section has to be exercised and the circumstances in which a premises may be exempted from compliance with the provisions of the Act or any of the rules made thereunder. Shri Mital has argued that in absence of any such guidance the power to exempt is liable to be abused and may result in discrimination violating Article 14 of the Constitution.

6. A similar argument was urged before their Lordships of the Supreme Court in *P.J. Irani Vs. The State of Madras*, , to which reference was made earlier on behalf of the appellants, but it was repelled. In this connection reliance was placed upon the following observations from an earlier decision of the Supreme Court in *Sardar Inder Singh Vs. The State of Rajasthan*, :

"It is argued that that section does not lay down the principles on which exemption could be granted, and that the decision of the matter is left to the unfettered and uncanalised discretion of the Government, and is therefore repugnant to Article 14. It is true that that section does not itself indicate the grounds on which exemption could be granted, but the preamble to the Ordinance sets out with sufficient clearness the policy of the Legislature; and as that governs Section 15 of the Ordinance, the decision of the Government thereunder cannot be said to be unguided."

7. Reference was also made to *Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi*, , wherein the matter had been considered at some length in examining Section 18 of the Slum Area (Improvement and Clearance) Act, 1956 (Central Act 96 of 1956), and it was laid down:--

"So long, therefore, as the Legislature indicates, in the operative provision of the statute, with certainty, the policy and purpose of the enactment the mere fact that the legislation is skeletal, or the fact that a discretion is left to those entrusted with administering the law, affords no basis either for the contention that there has been an excessive delegation of legislative power as to amount to an abdication of its functions, or that the discretion vested is uncanalised and unguided as to amount to a carte blanche to discriminate. If the power or discretion has been conferred in a manner which is legal and constitutional the

fact that Parliament could possibly have made more detailed provisions, could obviously not be a ground for invalidating the law."

In view of these authorities, Section 10 of the Act cannot be struck down merely because it does not indicate the circumstances or the manner in which the power to exempt is to be exercised and we have to turn to the impugned order itself to find out if it has been made in violation of the provisions of Article 14 of the Constitution.

8. Though the order does not embody the reasons for which exemption was granted to Messrs. Prem Sagar and Company, yet in the return filed on behalf of the State it has been pointed out that similar exemptions from the provisions of Rule 19 (1) (a) (ii) of the rules have been granted in a number of cases and even the cinema building of Messrs. Rudra Talkies (petitioner-appellant No. 1) is less than 500 feet away from a recognized educational institution. It is further stated that Messrs. Prem Sagar and Company had undertaken to level up the low lying area by using a dampproof material and the Head Master of the Arya High School, Thanesar, had informed the authorities that he had no objection to the construction of a cinema building at the site in question.

Though I agree with Mr. Mital that the mere fact that the Head Master of the School does not object to the construction of the cinema building is not of much consequence, yet it is apparent that in granting the exemption the authorities have not been influenced by any oblique motive. Their order, far from being discriminatory, in fact extends the same privilege which has been enjoyed by the petitioners Messrs. Rudra Talkies. It cannot, therefore, be considered violative of the provisions of Article 14 of the Constitution.

9. In any case, I am of the opinion that no case for interference by this Court under Article 226 of the Constitution was made out, and the learned Single Judge quite rightly refused to grant any relief, as it is not disclosed even before us what legal rights of the appellants had been violated or infringed. In fact, as observed earlier, the appellants Messrs. Rudra Talkies had themselves benefited by a similar relaxation of Rule 19 (1) (a) (ii), and it does not lie in their mouth now to object to the exercise of the power vesting in the Government u/s 10 of the Act in the respondents' favour.

10. I accordingly, find no force in this appeal and dismiss the same with costs.

S.B. Capoor, J.

11. I agree.