
(1987) 08 KAR CK 0012
In the Karnataka High Court
Case No : W.P. Nos. 12626/1987, etc

Sangam Theatre and Others

APPELLANT

Vs

Addl. Dist. Magistrate, Bangalore District., and Another

RESPONDENT

Date of Decision : 25-08-1987

Acts Referred:

Karnataka Cinemas (Regulation) Act, 1964 — Section 15

Citation : (1987) 2 KarLJ 315

Hon'ble Judges : K. A. Swami, J

Judgement

K.A. Swami, J.-All these four writ petitions are connected though they are filed by different petitioners.

2. In these writ petitions under Articles 226 and 227 of the Constitution of India, the petitioners have sought for quashing the order dated 17-8-1987 passed by the Additional District Magistrate, Bangalore District, Bangalore in No. MAG (2) ENT. 25/87-88 in exercise of his power under Section 15 of Karnataka Cinemas (Regulation) Act, 1964 (hereinafter referred to as the "Act") suspending the exhibition of the film "Big Zapper" in Bangalore City forthwith. The order reads thus:

"PREAMBLE:

The Assistant Commissioner of Police, Chickpet Division, Bangalore, has reported that the English Film called as "Big Zapper" is being exhibited in Sangam Theatre, Tank Bund Road, Bangalore, since 13-8-1987 and the spectators as well as the General Public have been complaining to the Police that there have been quarrels and exchange of heated words, between two sections of the society i.e., one section consisting of Mahila Samaja Social Workers and All India Democratic Students Organisation are agitating that such films should not be screened. He also reported that they also burnt the banner of such films in the past and offering Dharna in front of the Sangam Theatre.

Further, he feels that there is every likelihood of breach of peace if film is allowed

to exhibit.

ORDER

In the above circumstance reported by the Assistant Commissioner of Police of Chickpet Division, Bangalore, I, P.V. Krishna Kumar, Additional District Magistrate, Bangalore District, in exercise of the powers vested in me under Section 15 of K.C. (R) Act, 1964 and K.C. (R) Rules 1971, hereby order to suspend the exhibition of film "BIG ZAPPER" in Bangalore City forthwith."

3. Sri P.S. Devadas, learned counsel for the petitioners, submits that the order is not in conformity with Section 15 of the Act inasmuch as no reasons are assigned nor any opportunity whatsoever was given to the petitioner. Therefore, it is not necessary for the petitioners to wait until the State Government exercises its power under sub-sections (4) and (5) of Section 15 of the Act.

4. On the contrary, Sri P.R. Ramesh, learned High Court Government Pleader submits that the picture "Big Zapper" contains several scenes which are opposed to public morality and decency and as a result thereof exhibition of this picture in the two theatres viz., "Sangam" and "New Imperial" created lot of commotion among the public; that there were oral and written complaints regarding the obscene scenes contained in the picture, therefore, the jurisdictional police officer got the film witnessed by some of his subordinates who also reported that the film contained several obscene scenes; that it was thereafter the Assistant Commissioner of Police, Chickpet Division, submitted a report dated 17-8-1987 bearing No. GC. 777/ACP/4/87 to the Additional District Magistrate, Bangalore District, Bangalore, who on being satisfied that there is every likelihood of breach of peace if the film is allowed to be exhibited, has passed the impugned order. It is further submitted that as the public peace and safety were in immediate danger and as there was every likelihood of breach of peace, reasonable opportunity required to be given under Sub-Sec. (2) of Section 15 of the Act could not be given and it was dispensed with for the reasons separately recorded by the Addl. District Magistrate as provided under the very same sub-section. It is also further submitted that on the basis of the complaints received by the jurisdictional police officer, a criminal case has been registered against the petitioners herein for the offence punishable under Section 292 I.P.C. and F.I.R. is also lodged before the Chief Metropolitan Magistrate, Bangalore Metropolitan Area, Bangalore and, the film in question has been seized and produced before the Chief Metropolitan Magistrate, Bangalore Metropolitan Area, Bangalore, who by his order dated 22-8-1987 permitted the investigating authority to retain the film with him for the purpose of investigation.

5. An Affidavit of the Assistant Commissioner of Police, Chickpet Division, Bangalore, who has made the report dated 17-8-1987 to the Additional District Magistrate, on the basis of which the impugned order is passed, has also been filed. Under these circumstances, the learned High Court Government Pleader submits that the learned Additional District Magistrate is justified in suspending

the exhibition of the film in question. Therefore, in the interest of public peace and tranquillity, morality and decency, it is not a case for interference under Articles 226 or 227 of the Constitution of India. It is further submitted that the State Government is required to take a decision in the matter before the expiry of two weeks as per sub-section (4) of Section 15 of the Act and if no decision is taken within two weeks, the order impugned will automatically lapse, and as one week has already elapsed, it is not a case for exercising the jurisdiction under Article 226 or 227 of the Constitution.

6. Having regard to the contentions raised by the parties, the point that arises for consideration is whether it is a fit case in which exercise of jurisdiction under Article 226 or 227 of the Constitution is called for.

7. A statutory authority while exercising the power under a statute is required to conform to the norms laid down in the statute. The impugned order does not contain any reason except stating that the general public have been complaining to the police that there have been quarrels and exchange of heated words between two sections of the society i.e., one section consisting of Mahila Samaja Social Workers and All India Democratic students organisation are agitating that the film should not be screened. No other reason is stated in the impugned order. As to on what basis there was agitation and why the authority was persuaded to resort to exercise the power under Section 15 of the Act, are not found in the order. Suspension of exhibition of a film which is certified by the Censor Board is a very serious step having serious consequences. The authority exercising the jurisdiction is required to be very circumspect and should be convinced that in the facts and circumstances of the case, there is no alternative but to suspend the exhibition of the film. The order does not disclose any such application of mind by the 1st respondent. Therefore, it is not possible to hold that there is required application of mind to the case as required by Section 15 of the Act.

8.1. No doubt the provisions contained in Section 15 of the Act are intended to meet the situation arising out of exhibition of a film which is likely to cause a breach of peace and thereby calling for immediate action in the matter in order to prevent breach of peace. The action is a temporary measure. The order passed by the District Magistrate remains in operation only for two weeks if not rescinded by the State Government. On making an order, the District Magistrate has to forward a copy of the order along with a statement of the reasons for making the order to the State Government. The State Government is entitled to either confirm, modify or extend the period of suspension not exceeding two months from the date of suspension for the reasons to be recorded in the order. If the State Government does not take any action, the order passed under Section 15(1) of the Act by the District Magistrate automatically lapses on the expiry of two weeks. It is also open to the State Government and the licensing authority to review its own order at any time. However it is necessary to make it clear that the licensing authority can review its own order only when there is no order passed by the State Government under sub-Section (4) or (5) of Section

15 of the Act. When once there is an order passed by the State Government and thereafter the District Magistrate is of the opinion that the order is required to be reviewed, he has to make a report to that effect to the State Government. As far as the State Government is concerned, it can, at any time either suo moto or on the report of the District Magistrate review the order.

8.2. No doubt sub-section (2) of Section 15 of the Act provides in specific terms that no order shall be issued under sub-section (1) until the person concerned has been given a reasonable opportunity of showing cause against the order proposed to be issued in regard to him. But at the same time, the very same provision also enables the District Magistrate or the State Government, as the case may be, to dispense with the requirement of giving a reasonable opportunity of showing cause against the order proposed to be issued to the person concerned, in case the State Government or the District Magistrate, as the case may be, is satisfied that under the facts and circumstances of the case, due to emergency or for some other reason to be recorded in writing, it is not at all reasonably practicable to give the person concerned an opportunity of showing cause. Thus the legislature has enabled the licensing authority or the State Government, as the case may be, to take immediate action in the matter to meet grave situation of emergency which is likely to cause breach of peace if the exhibition of the film is allowed to be continued. Thus if there is imminent threat to public peace and tranquillity requiring immediate action in the matter, irrespective of the fact that the first portion of sub-section (2) requires that a reasonable opportunity of showing cause against the proposed order must be given to the person concerned, it can be dispensed with for the reasons to be recorded in writing. Therefore, if an order is passed under sub-section (1) of Section 15 of the Act without giving reasonable opportunity of showing cause, on recording reasons in writing for dispensing with such a requirement, to meet grave situation of emergency, in order to avert breach of peace, the authority cannot be held to have acted either illegally or in excess of its power and as such the order passed without affording a reasonable opportunity of showing cause under the aforesaid circumstances cannot be held to be illegal also. Maintenance of public peace and tranquillity is a primary thing. It can even over-ride, if the situation demands immediate action, the individual right and the requirement of law as to giving reasonable opportunity of showing cause. In the instant case, the District Magistrate has separately recorded reason in writing for dispensing with giving reasonable opportunity of showing cause. It is produced as Annexure-C1. The District Magistrate has stated therein that reasonable opportunity of showing cause against the proposed order could not be issued as immediate breach of peace is apprehended as reported by the police authorities if the film "Big Zapper" is continued in the theatres in question. The authority or the State Govt. as the case may be, must bear in mind that the principle "Audialteram Partem" i.e., no one shall be condemned unheard, is one of the basic foundations of rule of law which pervades our Constitution. Therefore, it is only in cases of real emergency where it is highly impracticable to give reasonable opportunity of

showing cause without risking public peace and tranquillity or in other words, it can be complied with only at the cost of public peace and tranquillity, the authority or the State Government, as the case may be, on recording reasons in writing for the same, dispense with the requirement of giving a reasonable opportunity of showing cause. It is not an empty formality to be complied with by recording in writing "reasonable opportunity of showing cause against the order proposed to be made could not be issued as immediate breach of peace is apprehended". As already pointed out, there should exist real emergency and it should be apparent from the reasons recorded in writing. In other words, the reasons recorded in writing must contain the facts and circumstances which would lead to an inference that there is imminent breach of public peace and tranquillity. In the instant case, it is not necessary to go into the question as to whether Annexure-C.1 satisfies the requirement of dispensing with the requirement of giving reasonable opportunity of showing cause against the order proposed to be issued because the impugned order itself does not satisfy the requirement of Section 15(1) of the Act.

9. There is no right given to the petitioners to approach the State Govt. and to have the order set aside or modified. Of course, at the same time, there is no prohibition contained in Section 15 of the Act preventing the aggrieved person to approach the State Government to have the order rescinded. Thus in the absence of any positive provision conferring a right of appeal on the petitioners to approach the State Government to have the order rescinded or modified, it is not possible to hold that there is an alternative remedy available to the petitioners against the impugned orders so as to decline to interfere and direct them to exhaust the remedy, before the State Government. Therefore, irrespective of the fact that the State Government is empowered to consider the order passed by the District Magistrate under sub-section (1) of Section 15 of the Act, it is still open to the aggrieved party to invoke the jurisdiction of this court under Article 226 or 227 of the Constitution of India.

10.1. That being the legal position, it is not possible to accept the contention of the learned High Court Government Pleader that as the District Magistrate has forwarded a copy of the order together with the statement of reasons therefor to the State Government under sub-section (4) of Section 15 of the Act, it is not a fit case for interference at this stage. It has to be remembered that suspension of exhibition of a film causes great monetary loss to the exhibitor of the film and at the same time it also deprives the public, the entertainment to which they are entitled.

10.2. There is also one more circumstance which persuades the court to interfere with the impugned order and direct the District Magistrate to re-do the proceedings in accordance with the provisions of Section 15 of the Act and that circumstance being, that the film in question has been seized in a criminal case to which a reference has already been made, in the earlier portion of this order. The film is produced before the Chief Metropolitan Magistrate, Bangalore

Metropolitan Area, Bangalore, who has permitted the investigating authority to retain the picture for the purpose of investigation. Therefore, there is no question of exhibition of the film by the petitioners because the film is not in their custody. Under these circumstances, if the District Magistrate gives a notice of a short period to the petitioners to show cause against the proposed order and then considers whether an order suspending exhibition of the film in question should be issued or not, neither the public peace and tranquillity is affected nor it causes any embarrassment to the authorities who are charged with the duty of maintaining law and order and ensuring public morality and decency.

11. For the reasons stated above, these writ petitions are allowed. The orders dated 17-8-1987 passed by the Additional District Magistrate, Bangalore District, Bangalore bearing No. MAG (2) ENT 25/87-88 produced as Annexure-C in each of these petitions are hereby quashed. It is open to the Additional District Magistrate or the District Magistrate, Bangalore District, Bangalore, as the case may be, to issue notice to the petitioners giving a short period to show cause as to why the exhibition of the film "Big Zaper" should not be suspended. The notice must contain the reasons/grounds on the basis of which the authority is of the opinion that the exhibition of the film should be suspended. If the petitioners show cause, the authority shall take the same into consideration and proceed to pass an order in accordance with the provisions of the Act and the observations made in this order. It is made clear that any observation made in this order shall not affect the criminal cases which are registered against the petitioners. It is also further made clear that quashing of the impugned orders does not come in the way of the District Magistrate or the Additional District Magistrate, as the case may be, to initiate the proceedings under Section 15 of the Act.

12. Sri P.R. Ramesh, learned High Court Government pleader is permitted to file a memo of appearance on behalf of the respondents in six weeks.