

(1987) 06 KAR CK 0010
In the Karnataka High Court
Case No : W.P. No. 7934/1987

Shamshoddin A. Hatnur

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 05-06-1987

Acts Referred:

Constitution of India, 1950 — Article 19(1)(G)

Citation : (1987) 2 KarLJ 45

Hon'ble Judges : M. Rama Jois, J

Judgement

Rama Jois, J.-In this petition the petitioner has challenged the validity of some of the provisions of the Karnataka Exhibition of Films or Television Screen through Video Cassette Recorder (Regulation) Rules, 1984 ("the Rules" for short) framed under the Karnataka Cinemas (Regulation) Act, 1964 ("the Act" for short).

2. The matter has come up for preliminary hearing. Government Advocate is directed to take notice for respondents. The matter is taken up for final hearing.

3. The facts of the case, in brief, are as follow: The petitioner is a resident of Jamkhandi in the district of Bijapur. He had made an application in Form-1 (Annexure-A) before the District Magistrate, Bijapur, for exhibition of films on television screen through Video Cassette Recorder on 26-12-1986. According to the petitioner the licence has not yet been granted. He has presented this petition questioning the validity of Clauses (i), (ii), (iii), (iv) and (vi) of sub-rule (2) of Rule 4, Clause (ii) of sub-rule (1) of Rule 5, and sub-rules (1) to (7), and (10) of Rule 10 of the Rules. They are as below:

4. 4. GRANT OR REFUSAL OF LICENCE.-(1) On receipt of application under rule (3), the licensing authority shall,- (i) If the application is not in order, return the same for representation within a period of thirty days failing which such application is deemed to have been rejected:

(ii) If the application is in order forward the copies of such application to the following authorities having jurisdiction over the area where the place is situated

for their reports or certificates- a) the Superintendent of Police or Commissioner of Police;

b) the Executive Engineer, Public Works Department;

c) the Health Officer;

d) the Officer of the Electrical Inspectorate;

e) the Fire Officer.

(2) The authorities specified above, within 15 days from the date of receipt of application under sub-rule (1), before sending report or certificate, as the case may be, regarding the exhibition of films on television screen through video cassette recorder, satisfy themselves about the following-

i) that there is a need in the place where the licence is sought;

ii) that the exhibition of films will not endanger public safety;

iii) that the building and electrical installations are adequate and sound for the exhibition of films;

iv) that adequate provisions are made for sanitation, ventilation and light;

v) xx xx xx xx

vi) that the Provisions of these rules and the Act and the Rules that are in force regarding exhibition of Cinematograph films have been complied with; and

vii) xx xx xx xx".

5. LICENSING AUTHORITY TO PERMIT CONSTRUCTION AND RECONSTRUCTION OF BUILDINGS, INSTALLATION OF MACHINERY, ETC., FOR EXHIBITION OF FILMS-

(1) Any person who intends-

(i) xx xx xx xx xx xx xx xx

"(ii) to use any site for constructing a building thereon for the exhibition of films on television screen through Video Cassette Recorder".

xxx xxx xxx xxx

shall make an application in writing to the Licensing authority for permission thereof together with such particulars as may be specified by the Licensing Authority.

"10. CONDITIONS REGARDING SEATING ACCOMODATION-

(1) No premises for exhibiting films shall be licensed to accomodate more than twenty persons per nine square metres in the auditorium and the number so fixed for each part of the auditorium shall be specified in the licence.

(2) The entrance, passage, corridor, gangway and stage, shall be deducted

before calculating the area available for seating accommodation.

(3) The distance between the television screen and the first row of seat shall not be less than ten feet.

(4) There shall be a passage of 0.90 metre in width for every ten rows of seating accommodation.

(5) The gangways shall not be less than 0.90 metre in width and shall be so arranged that no seats shall be more than ten feet away from the gangway.

(6) the chairs shall be battened together in complete lengths.

(7) There shall be an intervening space of at least 0.35 metre between the back of one seat and the front of the seat immediately behind measured between perpendicular.

(8) xx xx xx

(9) xx xx xx

(10) There shall be an open space of not less than ten feet in width on any two sides of the building and an open space of twenty feet on the third side for parking of vehicles."

5. A reading of the above rules indicates that they are all designed in public interest and regulatory in character.

6. Learned Counsel for the petitioner, however, submitted that Clauses (i) and (ii) of sub-rule (2) of Rule 4 of the Rules empowers the District Magistrate to find out as to whether there was a need in the place where the licence is sought to exhibit films on television screen through Video Cassette Recorder and, issue of such licence will not endanger public safety and the. District Magistrate, at his will and pleasure, reject the application.

7. I am unable to agree with the above submission. The object and purpose of the Rules is discernible from their wording and also the preamble to the preamble to the Karnataka Cinemas (Regulation) Act, 1971. They are designed in public interest and the conditions and restrictions imposed are reasonable and are meant to sub-serve public interest. The District Magistrate cannot reject an application arbitrarily. He has to give valid reasons. If any District Magistrate refuses application without assigning reasons or, the reasons given are found to be not valid and no reasons at all, the rejection would be arbitrary, and it is always open to the individual concerned to approach this Court against such rejection. But, there is no basis to say that the Rules confer any arbitrary power.

8. There is no substance in the contention that rule 5(ii) is violative of Article 19(1)(g). The sub-rule is only regulatory in character. It requires a person who wants to use any site for constructing a building for exhibition of films on television screen to make application.

9. Similarly sub-rules (1) to (7) and (10) of Rule 10 which have been extracted earlier show that they are all intended to safe-guard the health and sanitation and, therefore, are designed in public interest.

10. Learned Counsel for the petitioner submitted that there are writ petitions pending questioning the validity of the Rules. Learned Counsel for the State submitted that number of petitions had been filed questioning the validity of the Rules and some of them had been referred to the Division Bench and, before the Division Bench, after arguing the matters, the petitioners ultimately withdrew the writ petitions and the matters now pending before the learned Single Judge are those which had not been referred to the Division Bench.

11. Whatever that may be, the fact remains that, as I have indicated above, there is no basis to hold that any of the Rules, validity of which is challenged by the petitioner, are arbitrary and unreasonable so as to infringe the fundamental right of doing business, of the petitioner guaranteed under Article 19 of the Constitution of India.

12. Learned Counsel for the petitioner also submitted that he had made an application, as early as in December 1986, but that application has not yet been considered by the District Magistrate. As far as this submission is concerned, the petitioner is right in saying that when an application is made it is the duty of the District Magistrate to consider the application on merits and pass appropriate orders.

13. In the result, I make the following:

ORDER

1. The Writ Petition, in so far as it relates to the validity of the Rules is concerned, it is dismissed.

2. A direction shall issue to respondents the District Magistrate, Bijapur, to consider the application of the petitioner dated 26-12-1986 on merits and in the light of the Rules for regulating the grant of licence and to pass appropriate orders. Time for compliance Two months.

3. Sri P.R. Ramesh, HCGP, is permitted to file his memo of appearance in two weeks.