

(1984) 07 KAR CK 0042

In the Karnataka High Court

Case No : Writ Petition No"s. 9586, 9782, 9787, 9818 and etc. etc. of 1984

Sri Mahaveer Touring Talkies and etc.

APPELLANT

Vs

The District Magistrate, Mandya District, Mandya and Others

RESPONDENT

Date of Decision : 09-07-1984

Acts Referred:

Karnataka Cinemas (Regulation) Rules, 1971 — Rule 98 (2)

Citation : AIR 1986 Kar 208

Hon'ble Judges : K.S. Puttaswamy, J

Bench : Single Bench

Advocate : B.G. Sridharan, for the Appellant; M.R. Achari, Government Advocate, for the Respondent

Judgement

1. As common questions of law arise for determination in these cases, I propose to dispose of them by a common order.

2. In exercise of the powers conferred by the Karnataka Cinemas (Regulation) Act of 1964 (hereinafter referred to as the Act) Government of Karnataka has framed, the Karnataka Cinemas (Regulation) Rules, 1971 (hereinafter referred to as the Rules) which came into force from 15-3-1971.

3. Part IV of Chap. XII of the Rules regulate the grant of "No Objection Certificate" (hereinafter referred to as the NOC), licences and re-grant of licences to touring cinemas. Rule 98 as originally framed, did not provide for stoppage of licences granted to touring cinemas. But, by notification No. GSR 130 dt. 16-4-1974, a new sub-rule was added to Rule 98 regulating the stoppage of touring cinemas for a period of one month and the same which is material reads thus: -

"No licence in respect of a site shall be granted or re-granted continuously for a period exceeding one year unless one month has lapsed after the expiry of said period of one year".

The validity of this rule was challenged before this Court by several touring

cinema operators and Chandrashekhar, J. (as he then was) on 18-10- 1974 upheld validity since reported, as Sri Lakshmi Touring Talkies v. State of Karnataka AIR 1975 Kar 37 which has been affirmed by a Division Bench of this Court consisting of Venkatachala and Lakshmeshwar, JJ. on 17-4-1984 in Sri Vinayaka Touring Talkies v. State of Karnataka (Writ Appeal No. 102 of 1975 and connected cases). So far as this Court, the validity of R. 98(2) thus stands concluded.

4. When the petitioners and others had approached this Court challenging the validity of R. 98(2) from time to time, this Court had granted them interim orders directing the concerned District Magistrates to dispose of their applications for re-grant of licences made before them without reference to said Rule and in compliance of those interim orders, their licences had been re-granted without reference to the said Rule. But, in restricting the period of re-grant itself, the licensing authorities had not adopted a uniform practice. While some licensing authorities had re-granted the licences for the maximum period of one year permissible thereto, others had re-granted them for shorter periods of three or six months as the case may be.

5. On the pronouncement of the judgment in Vinayaka Touring Talkies" case by the Division Bench, the licensing authorities in the State, have started enforcing R. 98(2), which they are undoubtedly entitled to do, which position cannot and is not disputed by the petitioners. But, what is seriously disputed by the petitioners is the manner and method of the enforcement of R. 98(2) of the Rules. Even here the practice adopted is not uniform. Broadly speaking two situations have arisen which has again given rise to these writ petitions before this Court.

6. Some of the licensing authorities interpreting the order of the Division Bench in Vinayaka Touring Talkies case, have directed certain petitioners to forthwith stop the exhibition of their shows for a period of one month, irrespective of the period for which their re-granted licences were valid. When some of the petitioners approached the respective licensing authorities for re-grant of their respective licences, they have directed them to stop their shows for a period of one month, as a condition precedent to the consideration of their applications for re-grant under the Act. Aggrieved by those directions/actions of the respective licensing authorities, the petitioners have approached this Court under Art. 226 of the Constitution for appropriate reliefs.

7. The petitioners have urged that the construction placed by the licensing authorities on the scope and ambit of R. 98(2) of the Rules and the orders of this Court are erroneous. They have urged that the stoppage of the shows for a period of one month on the expiry of one year must necessarily be after one year of issue of licence or one year from the date of re-grant of their respective licences only. Lastly, they have urged that the re-grants made for earlier periods in terms of the interim or final orders made by this Court have to be treated as valid and the stoppages regulated on that basis only.

8. Sri B. G. Sridharan, learned counsel for the petitioners, strenuously contends that on a proper construction of the orders made by this Court and R. 98(2) of the Rules, the stoppage of shows for a period of one month, should only be after one year from the date of issue of original licence or the date of re-grant of licence and cannot be in any other manner.

9. Sri M. R. Achar, learned Government Advocate, appearing for the respondents, in justifying the action of the authorities, contends that on the disposal of their writ appeals or writ petitions, the petitioners were bound to stop their shows for a period of one month and that stoppage was a condition precedent for the consideration of their application, if any, for re-grant made under the Act and the Rules.

10. Let me first examine the effect of earlier interim or final orders made by this Court.

11. As noticed earlier, the rule framed by Government on 16-4-1974 did not have a smooth and uninterrupted run till 17-4-1984, on which day its validity reached finality before this Court. But, till then in the case of the petitioners and other touring cinema operators, they had the benefit of either interim or final orders made in their favour. On the strength of those orders, the petitioners and others had operated their shows uninterruptedly. While disposing of many cases this Court had directed the licensing authorities not to revoke the licences already re-granted to the petitioners and others for the un-expired period of their licences. In some cases, such a specific direction does not appear to have been made by this Court. But, in those cases also, there is no other alternative except to treat them as this Court directing the licensing authorities not to revoke the licences for the unexpired period. As a corollary to this, the question of the licensing authorities enforcing the rule earlier or for the unexpired period of licence does not and cannot arise. In other words, the earlier periods that have expired have to be treated as having expired for all time to come and unavailable for enforcement in future.

12. Earlier, I have extracted R. 98(2) in its entirety. The object and intendment of framing the Rule was that a touring cinema should stop its shows for a period of one month either after the expiry of one year of the licence or after the expiry of one year of re-grant of such a licence by the authorities.

13. There is no dispute that the maximum period for which a licence can be granted or re-granted is one year only.

14. Sub-rule (2) of R. 98 provides for two things and they are (i) that a licence or re granted licence shall not be operated or valid for a period beyond one year and (ii) that after the expiry of that period of one year, there should be a break or stoppage of such licence for a period of one month to maintain the character of a touring cinema. The lapse of one month or stoppage of shows for a period of one month has to occur after the expiry of one year of issue of licence or one year of re granted licence and not before that. When a licence is issued or re-

granted for a period of one year, as is permissible, the question of continuity or continuously, contemplated in the said Rule does not arise. But, when there are short term issue or re-grant of licences for periods lesser than one year, in those cases, the period of one year after which only there should be a break or stoppage, had to be computed for one year from that date of issue of licence or re-grant of that licence as the case may be. This is the construction of the term "continuously" occurring in R. 98(2). In other words the term "continuously" provides for continuous running of the shows by the concerned licensee for a continuous period of one year in case of short term grants or re grants only and not otherwise.

15. Every case of stoppage, which has become imperative and cannot be avoided, has to be regulated on an examination of the concerned licence of that licensee on the basis of the above construction. In each case, the licensing authority had to examine and decide the period of one year from the date of issue of licence or its re-grant and then regulate its stoppage on that basis necessarily ignoring the earlier non-stoppage by the concerned licensee by reason of the Court orders or otherwise also. Every case has to be examined and decided on its own facts and there, cannot be blind or mechanical approach at all.

16. Let us illustrate the effect of construction placed earlier with reference to a hypothetical case.

17. I will assume that the District Magistrate, Bangalore has issued a licence to X for running a touring cinema at a place "Y" on 1-9-1975 and in pursuance of the interim orders or final orders made by this Court, he has re-granted the licence from time to time. For some time he has re-granted the licence for the maximum period of one year and for the last one year he has re-granted the licence for a period of three months only, on which basis his licence is due to expire on 31-8-1984. I will also assume that the writ appeal or writ petition of X has been dismissed by this Court without giving a specific direction not to revoke his licence. On the construction placed by me on the scope and ambit of the orders of this Court and the Rules X should be directed to stop his shows for a period of one month from 1-9-1984. When he makes his application for re-grant, the District Magistrate can re-grant the same to be effective from 1-10-1984, thus providing for stoppage of one month during the month of September, 1984 or re-grant the licence itself from 1-10-1984. When the application of "X" for fresh re-grant is made for the period from 1-10-1985 and onwards the commencement of the period of licence will naturally shift from 1st September to 1st October.

18. An examination of some of the impugned orders discloses that the licensing authorities have not ascertained the true scope and ambit of R. 98(2), the earlier interim or final orders made by this Court, the earlier regrant made by them at all carefully but have sought to enforce the said rule almost blindly or mechanically. In these circumstances, there is no alternative except to quash them and direct the licensing authorities to re-examine and decide afresh.

In the light of my above discussion, I make the following orders and directions:-

(a) I quash the orders impugned in these cases.

(b) I direct each of the licensing authorities to regulate the stoppage and the disposal of the applications for re-grants made before them by computing -the period of one year either from the date of issue or re-grant of that licence ignoring the earlier non-stoppages by that licensee in pursuance of the Court orders or otherwise in accordance with law and the observations made in this order.

20. Writ petitions are disposed of in the above terms. But, in the circumstances of the cases I direct the parties to bear their own costs.

21. Let this order be communicated to the respondents within 7 days from this day. Let a carbon copy of this order certified by the Court Officer (Court Hall No. 7) be furnished to the learned Government Advocate within the same time.

22. Sri M. R. Achar, learned Government Advocate is permitted to file his memo of appearance for the respondent in all these cases within 15 days from this day.

23. Order accordingly.