

(1988) 09 KAR CK 0003
In the Karnataka High Court
Case No : W.P. No. 12589/1988

Sudhir Mehta

APPELLANT

Vs

Dist. Magistrate and Dy Commissioner, Gulbarga and Others

RESPONDENT

Date of Decision : 13-09-1988

Acts Referred:

Karnataka Cinemas (Regulation) Rules, 1971 — Rule 105

Citation : (1988) 2 KarLJ 474

Hon'ble Judges : S. R. Rajasekhara Murthy, J

Judgement

Rajashekara Murthy, J.-The learned Govt. Pleader was directed to take notice re. rule and produce the records of the District Magistrate The matter is heard on merits and disposed of by the following order after issuing rule.

The petitioner applied for grant of No Objection Certificate (NOC) in Form A under Rule 90 of the Karnataka Cinemas (Regulation) Rules, 1971 (the old Rules). This application was made on 24-1-1985. The District Magistrate, Gulbarga by his order dated 15-10-1986 rejected the said application. Against the said order the petitioner filed an appeal to the Divisional Commissioner, Gulbarga under Section 10 of the Karnataka Cinemas (Regulation) Act, 1971 (the Act). The Divisional Commissioner, by his order dated 3-3-1987, set aside the order made by the District Magistrate and directed issue of NOC to the petitioner subject to the other conditions being satisfied. When the matter came back to the District Magistrate he granted the licence for three months only under Rule 90 of the New Rules, 1987. The District Magistrate declined to grant licence for a period exceeding three months on the ground that such grant of licence was not permitted under the new Rules.

Against this order, the petitioner again filed an appeal before the Divisional Commissioner, Gulbarga under Section 10 of the Karnataka Cinemas (Regulation) Act, 1964. The Divisional Commissioner, by his order dated 26-7-1988 dismissed the appeal and confirmed the view taken by the District Magistrate. These orders are challenged by the petitioner in this writ petition.

It is argued by Sri Indrajit Shah, the learned Counsel for the petitioner that both the authorities erred in applying the 1987 Rules to the petitioner's case. The argument is that on 3-3-1987 the Divisional Commissioner had directed issue of NOC to the petitioner and the petitioner's right to grant of NOC under the repealed Rules was saved by Section 6 of the Karnataka General Clauses Act. In support of this argument Sri Shah has cited decision of Supreme Court *Garikapati Veeraya v. N. Subbaiah Choudhry and others* (AIR 1957 SC 540) and two decisions of this Court under Gold Control Act and Customs Act reported in 1973(1) Mysore Law Journal at pages 134 and 258 (*Asst. Collector of Central Excise and Customs v. Namdev Jayaram Jadhav* at page 134 and *V Vembu Iyer v. Union of India and others* at page 258) respectively.

The order passed by the Divisional Commissioner is supported by the learned Govt. Pleader on the ground that the provisions contained in Chapter-XII relating to the Touring Cinema was substituted by the new Rules with effect from 25-2-1987 and in its place new Chapter-XII has been introduced under the new Rules. The argument of the learned Govt. Pleader is that in the matter of grant of licence for touring cinemas they are governed by the new Rules 89 and 90 which restrict the grant of such licences for a period of three months only at any one place. He also points out that only in cases of persons who are having touring cinema licence on 25-2-87 on which date the new Rules came into force. Rule 105 provides for conversion subject to the other conditions referred to in Rule 105. He also relies upon the decision of Justice K.A. Swami in *Srinivas Chitra Mandira v. Government of Karnataka* reported in ILR 1981 at page 1431.

I have carefully considered the arguments of Sri Shah and the effect of Section 6, General Clauses Act to the facts of the present case. The decisions relied upon by Sri Shah do not bear on the point. In *Garikapatti Veeraya's* case, the question that was considered by the Supreme Court was, what should be the law that should be applied having regard to the date of institution of suit. The Supreme Court held that the career of the suit is always governed by the law in force on the date of institution of the suit.

In the two decisions of this Court referred to by Sri Shah, the first of the cases was under Gold Control Act and the second was under the Customs Act. The first decision arose out of proceedings initiated under Defence of India Rules. This Court, while dealing with the effect of Section 6 of the General Clauses Act on the proceedings started before the repeal of Defence of India Rules, held that since the proceedings had been instituted against the accused under the Defence of India Rules, the case and the sentence to be awarded were governed by those rules and the proviso to Section 85 of the Gold Control Act did not apply.

The second case arose under the Customs Act. This Court was dealing with the effect of the repeal of the Sea Customs Act, 1878, vis-a-vis the effect of Section 129 of the Sea Customs Act, in the matter of the power of the appellate authority who was vested with discretion to dispense with the pre-deposit of the demand. None of these decisions, therefore, is of any assistance to the

petitioner's case.

Then, what remains to be considered is the effect of sub-clause (c) of Section 6 of the General Clauses Act under which any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed, are saved.

The effect of Section 6 of the General Clauses Act on the new Rule 105 as introduced by 1987 Rules is interpreted by this Court (by KASJ) in the decision relied upon by the learned Govt. Pleader. On Point No. 2 which was formulated for consideration at page No. 1466, His Lordship considered the argument advanced by both sides and held in paragraph 23.2 as follows:

"Thus under the 1987 Rules, different intention appears as pointed out above. Therefore, it is not possible to hold that either the right to obtain a touring cinema licence pursuant to No Objection Certificate granted for a touring cinema under the 1971 Rules or the proceeding initiated under the 1971 Rules for grant of licence, can be held to have been saved by the 1987 Rules."

However, dealing with the question as to whether a holder of a NOC granted under 1971 Rules was entitled to have the touring cinema licence even after coming into force of 1987 Rules, His Lordship held that the right to grant of licence was saved in a case where the applicant was in possession of a valid NOC on 25-2-1987.

But on the facts of the present case the petitioner did have a NOC on 25-2-1987 since the direction to grant NOC was issued by the Divisional Commissioner on 3-3-1987. Therefore, the argument of Sri Shah that he had a right to the grant of NOC on the day the new Rules came into force, relying upon Section 6(c) of the General Clauses Act, has to be rejected.

Section 6 of the General Clauses Act itself provides that the repealed provisions shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed enactment unless a different intention appears. The entire Chapter-XII which dealt with grant of touring cinema licences was substituted by a new Chapter with effect from 25-2-1987 and the grant of touring cinema licences therefore is now governed by the new Rules.

Only in a case where the applicant was in possession of a valid NOC, he is entitled to ask for conversion of the touring cinema into a semi permanent cinema subject to satisfying the other conditions imposed under the new Rules. So far as the pending applications for grant of licence for touring cinemas are concerned, they automatically lapsed on the repeal of the old rules and any licence for touring cinema is to be granted and regulated only under the new rules. The new rules restrict grant of a touring cinema licence only for three months at one place. That this is the clear intention of the new rules, is what could be spelled out for the scheme of the new Chapter-XII inserted by the new rules.

As held by KASJ subject to this right being preserved, the new Rules should

apply to all cases of grant of licences for touring cinemas.

For the reasons stated above, writ petition fails and is, therefore, dismissed.