SUPREME COURT UNITED STATES

Teitel Film Corporation

Vs.

John F. Cusack

No. 787.

Decided Jan. 29, 1968.

Elmer Gertz and Leon N. Miller, for appellants.

Raymond F. Simon and Marvin E. Aspen, for appellees.

PER CURIAM.

This appeal seeks review of judgments of the Supreme Court of Illinois which affirmed orders of the Circuit Court of Cook County permanently enjoining the appellants from showing certain motion pictures in public places in the City of Chicago, 38 Ill.2d 53, 230 N.E.2d 241. The questions presented are whether the Chicago Motion Picture Censorship Ordinance is unconstitutional on its face and as applied, and whether the films involved are obscene.

The Chicago Motion Picture Censorship Ordinance prohibits the exhibition in any public place of 'any picture * * * without first having secured a permit therefor from the superintendent of police.' The Superintendent is required 'within three days of receipt' of films to 'inspect such * * * films * * * or cause them to be inspected by the Film Review Section * * * and within three days after such inspection' either to grant or deny the permit.2 If the permit is denied the exhibitor may within seven days seek review by the Motion Picture Appeal Board. The Appeals Board must review the film within 15 days of the request for review, and thereafter within 15 days afford the exhibitor, his agent or distributor a hearing. The Board must serve the applicant with written notice of its ruling within five days after close of the hearing. If the Board denies the permit, 'the Board, within ten days from the hearing, shall file with the Circuit Court of Cook County an action for an injunction against the showing of the film.' A Circuit Court Rule, General Order 3—3, promulgated May 26, 1965, provides that a 'complaint for injunction * * * shall be given priority over all other causes. The Court shall set the cause for hearing within five (5) days after the defendant has answered * * *.'3 However, neither the rule nor any statutory or other provision assures a prompt judicial decision of the question of the alleged obscenity of the film.

The Illinois Supreme Court held 'that the administration of the Chicago Motion Picture Ordinance violates no constitutional rights of the defendants.' 38 Ill.2d, at 63, 230 N.E.2d, at 247. We disagree. In Freedman v. State of Maryland, [1965] USSC 32; 380 U.S. 51, 58—59[1965] USSC 32; , 85 S.Ct. 734, 739[1965] USSC 32; , 13 L.Ed.2d 649, we held '* * * that a noncriminal process which requires the prior submission of a film to a censor avoids constitutional infirmity only if it takes place under procedural safeguards designed to obviate the dangers of a censorship system. * * * To this end, the exhibitor must be assured, by statute or authoritative judicial construction, that the censor will, within a specified brief period, either issue a license or go to court to restrain showing the film. * * * (T)he procedure must also assure a prompt final judicial decision, to minimize the deterrent effect of an interim and possibly erroneous denial of a license.' (Emphasis supplied.) The Chicago censorship procedures violate these standards in two respects. (1) The 50 to 57 days provided by the ordinance to complete the administrative process before initiation of the judicial proceeding does not satisfy the standard that the procedure must assure 'that the censor will, within a specified brief period, either issue a license or go to court to restrain showing the film.' (2) The absence of any provision for a prompt judicial decision by the trial court violates the standard that '* * * the procedure must also assure a prompt final judicial decision * * *.'

Accordingly, we reverse the judgments of the Supreme Court of Illinois and remand the case for further proceedings not inconsistent with this opinion.

Reversed and remanded.

Mr. Justice BLACK and Mr. Justice DOUGLAS, agreeing that Freedman v. State of Maryland, [1965] USSC 32; 380 U.S. 51, 58—59[1965] USSC 32; , 85 S.Ct. 734, 738—739[1965] USSC 32; , 13 L.Ed.2d 649, requires reversal of this case, base their reversal also on Redrup v. State of New York, [1967] USSC 173; 386 U.S. 767, 87 S.Ct. 1414, 18 L.Ed.2d 515.

Mr. Justice HARLAN concurs in the result.

Mr. Justice STEWART bases his concurrence in this judgment upon Redrup v. State of New York, [1967] USSC 173; 386 U.S. 767, 87 S.Ct. 1414, 18 L.Ed.2d 515.