R. M. Seshadri

Vs

The District Magistrate, Tanjore and Another

Civil Appeal No. 192 of 1952

(CJI M. C. Mahajan, Ghulam Hasan, Vivian Bose, B. K. Mukherjea, S. R. Dass JJ)

01.10.1954

JUDGMENT

GHULAM HASAN J. -

The appellant is the owner of a permanent cinema theatre called Sri Brahannayaki in Tiruthuraipundi, Tanjore District, and held a licence from the District Magistrate, Tanjore, in respect of the same with effect from September 5, 1950, to September 4, 1951. The licence is granted for one year at a time and is renewable from year to year. He objected to certain conditions in the licence imposed by the District Magistrate, Tanjore, in pursuance of 2 notifications (G.O. Mis. 1054, Home, dated 28th March, 1948, and G.O. Mis. 3422, dated 15th September, 1948) issued by the State of Madras purporting to act in exercise of powers conferred by section 8 of the Cinematograph Act of 1918. The impugned conditions may conveniently be set out here :

> "4(a) The licensee shall exhibit at each performance one or more approved films of such length and for such length of time, as the Provincial Government or the Central Government may, by general or special order, direct.
>
> (b) The licensee shall comply with such directions as the Provincial Government may by general or special order give as to the manner in which approved films shall be exhibited in the course of any performance."

Explanation :- "Approved Films" means a cinematograph film approved for the purpose of this condition by the Provincial Government or the Central Government.

Special condition 3. - "The licensee should exhibit at the commencement of each performance not less than 2,000 feet of one or more approved films."

The appellant moved the High Court of Judicature at Madras under article 226 of the Constitution for an order or direction to the District Magistrate, Tanjore, to delete the said conditions from his licence and to the State of Madras to rescind the notifications issued by it. His contention was that the conditions imposed by the said notifications are ultra vires and beyond the powers of the licensing authority and that they are void inasmuch as they contravened his freedom of speech and expression under article 19(1)(a) and his right to carry on trade or business under article 19(1)(g) of the Constitution. Both the contentions were rejected, the High Court holding that the conditions imposed were reasonable and were in the interests of the general public. The High Court granted leave to appeal to this Court.

The appellant who argued the appeal in person raised 2 main contentions. He argued firstly, that the notifications and conditions are beyond the competence of the Government of Madras and the District Magistrate, and secondly, that in any event the conditions do not, as being outside the scope of the Cinematograph Act, amount to reasonable restrictions imposed in the interest of the general public.

We are of opinion that this appeal can be disposed of on the second ground. It may be stated that the Madras Cinematograph Rules, 1933, were amended by the notification G.O. Mis. 1054, Home, dated March, 28, 1948, in exercise of the powers conferred by section 8 of the Cinematograph Act, 1918 (Central Act II of 1918), and in place of condition 4 of the licence in Form A, the impugned conditions were inserted. Section 8 empowers the State Government to make rules for the purpose of carrying into effect the provisions of the Act. The object of the Act as stated in the preamble is to make provisions for regulating exhibitions under the Cinematograph Act. Without going into the question whether it is within the contemplation of the Act that educational and instructional films should be shown and whether the holder of a cinema licence may be compelled to exhibit such films as falling within the scope of the Act, the question which still arises for consideration is whether the impugned conditions amount to "reasonable restrictions" within the meaning of article 19(6). Approved films are those films which are either produced by the Government or are purchased from the private producers. As the private producers do not possess any machinery for marketing their films the Government purchases them from such producers and charges hire from the cinema licensees for showing such films. Condition 4(a) compels a licensee to exhibit at each performance one or more approved films of such length and for such length of time as the Provincial Government or Central Government may direct. Neither the length of the film nor the period of time for which it may be shown is specified in the condition and the Government is vested with an unregulated discretion to compel a licensee to exhibit a film of any length at its discretion which may consume the whole or the greater part of the time for which each performance is given. The exhibition of a film generally takes 2 hours and a quarter. Now if there is nothing to guide the discretion of the Government it is open to it to require the licensee to show approved films of such great length as may exhaust the whole of the time or the major portion of it intended for each performance. The fact that the length of the time for which the approved films may be shown is also unspecified leads to the same conclusion, in other words, the Government may compel a licensee to exhibit an approved film, say for an hour and a half or even 2 hours. As the condition stands, there can be no doubt that there is no principle to guide the licensing authority and a condition such as the above may lead to the loss or total extinction of the business itself. A condition couched in such wide language is bound to operate harshly upon the cinema business and cannot be regarded as a reasonable restriction. It savours more of the nature of an imposition than a restriction. It is significant that the condition does not profess to lay down that the approved films must be of an educational or instructional character for the purpose of social or public welfare. We think, therefore, that condition 4(a) as it stands at present amount to an unreasonable restriction on the right of the licensee to carry on his business and must be declared void as against the fundamental right of the appellant under article 19(1)(g).

Among the special conditions, condition No. 3 which requires the licensee to exhibit at the commencement of each performance not less than 2,000 feet of one or more of the approved films is open to similar objection. This condition lays down the minimum length of the film to be shown as 2,000 feet and gives no indications of the maximum. We are informed that the showing of a film of 2,000 feet will take about 20 minutes. This will work out to about 1/7th of the total time of each performance if it is taken to last for 2 1/4 hours. Whether a maximum of 2,000 feet would be reasonable is a matter we need not consider but as this is mentioned as the minimum it is obvious

that the Government may compel the licensee to exhibit a film of 10,000 or 12,000 feet which in effect will amount to pushing out of the film intended to be shown by the licensee during the time allotted. Here again no maximum limit having been imposed it follows that the discretion of the authority is unrestrained and unfettered and must lead to an unjustifiable interference with the right of the licensee to carry on his business. We hold, therefore, that this condition is equally obnoxious and must be deleted. We accordingly allow the appeal and hold that condition 4(a) and special condition 3 expressed as they are at present are void and have no legal effect as against the fundamental right of the appellant under article 19(1)(g) of the Constitution.

We express no opinion upon the first contention advanced by the appellant. The appellant will get his costs from the respondent in this Court and in the Court below.

Appeal allowed.

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