State of Punjab and Another

Vs

Hari Krishan Sharma

Civil Appeal No. 763 of 1963

(CJI P.B. Gajendragadkar, K.N. Wanchoo, M. Hidayatullah, V. Ramaswami-I, R. Satyanarayan Raju JJ)

09.12.1965

JUDGMENT

GAJENDRAGADKAR, C.J. -

The short question of law which arises in this appeal relates to the construction of section 5(2) of the Punjab Cinemas (Regulation) Act, 1952 (No. 11 of 1952) (hereinafter called 'the Act'). The respondent, Hari Krishan Sharma, who claims to be owner of a certain site in the town of Jhajjar, desired to construct a cinema hall at the said place for the purpose of exhibiting cinematographs. On December 16, 1956, he submitted an application to appellant No. 2, the Sub-Divisional Officer, Jhajjar, for grant of the licence to construct and run a permanent cinema hall on his site. On February 22, 1957, appellant No. 2 forwarded the said application to the Tehsildar for inspection of the site. It appears that on April 24, 1957, the Government of appellant No. 1, the State of Punjab, had issued instructions in regard to the grant of licences under the relevant provisions of the Act. These instructions required that all requests for the grant of permission for opening all new permanent cinemas should be referred to appellant No. 1 for orders. On September 26, 1957, Tehsildar made a report that the site was in accordance with the provisions of the Act and that the respondent was its owner. On September 30, 1957, another memorandum was issued by appellant No. 1 addressed to all the District Magistrates and the Sub-Divisional Offices conveying the decision of appellant No. 1 that when an application for grant of permission to construct a permanent cinema was referred to the Government, it should be accompanied by the particulars enumerated in the memorandum. Amongst the items thus enumerated were the population of the town where the permanent cinema is proposed to be constructed; whether there are any permanent cinemas already in existence in the town, and if so, how many; whether the applicant/applicants has/have been taking any part in any activity undermining the security of the State; and whether the financial position of the applicant/applicants is/are sound. These notifications were issued by appellant No. 1 while the application made by the respondent was pending consideration.

On April 24, 1958, appellant No. 2 informed the respondent that the site proposed by him for the construction of the cinema hall had been approved. The respondent was required to submit a plan of the building within a month and he was warned not to transfer the ownership of the site without the previous sanction of the licensing authority. On May 23, 1958, the respondent submitted the building plans. These plans were forwarded by appellant No. 2 to the Executive Engineer, Provincial Division, Rohtak, for scrutiny. While forwarding the plans to the Executive Engineer, appellant No. 2 had stated that the respondent had been allowed to construct a permanent cinema hall at Jhajjar and the sit plans were being submitted for proper scrutiny and approval at an early date.

Meanwhile, it appears that one Mohan Lal had also applied for grant of a licence for construction of a cinema hall in June, 1958, but he was informed that permission had already been granted to one person, and there was no scope for a second cinema hall. That is why he was told that his application could not be considered. Yet another person, Sultan Singh by name, made a similar application on August 26, 1958. On October 7, 1958, the Provincial Town Planner, Punjab, wrote to the Executive Engineer that the building plans submitted by the respondent had been checked and they appeared to satisfy the rules framed under the Act so far as the structural features of the building were concerned. On October 6, 1958, however, appellant No. 2 addressed a memorandum to the respondent informing him that the site plans prepared by him for the construction of a permanent cinema hall would be referred to appellant No. 1 for approval "according to the latest instructions".

Then followed a report made by appellant No. 2 to appellant No. 1 on October 31, 1958, mentioning all the relevant facts in regard to the application of the respondent, and adding that the report was forwarded to appellant No. 1 for its consideration. On December 20, 1958, appellant No. 2 submitted another report to appellant No. 1 saying, inter alia, that it had been reported by the police that the respondent had been arrested in connection with "Save Hindi Agitation" and was discharged on tendering apology and that he did not pay any income-tax. On March 4, 1959, appellant No. 2 informed the respondent that his application had been rejected by appellant No. 1 as the same did not fulfill the conditions laid down in the memorandum, dated September 30, 1957. It appears that appellant No. 1 had decided to grant the licence to Sultan Singh, and that probably is the reason why the application of the respondent was rejected.

On receiving this communication from appellant No. 2, the respondent preferred an appeal to appellant No. 1 under s. 5(3) of the Act, but his appeal was rejected on April 14, 1959; and that drove the respondent to the High Court of Punjab to seek an appropriate relief under its jurisdiction under Article 226 of the Constitution.

In this petition, the respondent alleged that the order passed by appellant No. 1 rejecting his application for a licence under s. 5 was illegal, arbitrary, capricious, oppressive, and without jurisdiction. In support of his plea, the respondent had also alleged the in rejecting his application, appellant No. 1 had been influenced by extraneous considerations which had no relevance to the decision of the question as to whether a licence should be granted to him or not. The suggestion made by the respondent was that appellant No. 1 wanted to prefer Sultan Singh to him for extraneous considerations, and that rendered the impugned order invalid. On these allegations, the respondent claimed that writ in the nature of certiorari be issued setting aside the said order, and directing the appropriate authority under s. 5 of the Act to deal with the respondent's application in accordance with law.

The appellants disputed the allegations made by the respondent in his writ petition. It was urged that appellant No. 1 had taken into account the relevant considerations prescribed by the instructions issued by it by virtue of its authority under s. 5(2) of the Act, and had come to the conclusion that the respondent's application could not be granted. The plea made by the respondent that appellant No. 1 had been influenced by extraneous considerations, was denied.

On these pleas, the High Court was called upon to consider five issues. The important ones amongst these issues were about the jurisdiction of appellant No. 1 to pass the order rejecting the respondent's application for a licence, and about the invalidity of the order resulting from the fact that it was based on extraneous considerations. The High Court has upheld the respondent's

contention on the first point, and has held that appellant No. 1 had no jurisdiction to deal with the matter as it has purported to do. On that view, the High Court did not think it necessary to consider the other issues, particularly because "they involved questions of fact which are more or less disputed and on which it will not be possible to come to any clear conclusion on the factual side". In the result, the High Court has allowed the writ petition filed by the respondent and has directed the appellants to treat the order made by appellant No. 1 as void, ineffective, invalid and of no binding effect. In consequence, a writ of mandamus has also been issued requiring the licensing authority to deal with the respondent's application in accordance with law. It against this order that the appellants have come to this Court by special leave and the only question which they have raised before us for our decision is whether the High Court was right in holding that appellant No. 1 had no jurisdiction to deal with the respondent's application in the manner it has done under s. 5(2) of the Act. That is how the question about the construction of s. 5(2) falls to be decided in the present appeal.

Before dealing with this question, we may very briefly indicate the effect of the broad provisions of the Act. The Act was passed in 1952 in order to make provisions for regulating exhibitions by means of cinematographs in the Punjab. Section 3 of the Act provides that no person shall give an exhibition, by means of a cinematographs, elsewhere that in a place licensed under this Act or otherwise than in compliance with any condition and restriction imposed by such licence. Section 4 provides that the licensing authority under the Act shall be the District Magistrate. The proviso to this section authorises the Government, by notification, to constitute for the whole or any part of the State, such other authority as it may specify therein, to be the licensing authority for the purposes of the Act. It is common ground that appellant No. 2 has been constituted a licensing authority for the area with which we are concerned in the present appeal.

That takes us to s. 5 which must be read :-

> "5. (1) The licensing authority shall not grant a licence under this Act unless it is satisfied that -
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> (a) the rules made under this Act have been complied with; and
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> (b) adequate precautions have been taken in the place, in respect of which the licence is to be given, to provide for the safety of the persons attending exhibitions therein.
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> (2) Subject to the foregoing provisions of this section and to the control of the Government, the licensing authority may grant licences under this Act to such persons as it thinks fit, on such terms and conditions as it may determine.
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> (3) Any person aggrieved by the decision of the licensing authority refusing to grant a licence under this Act may, within such time as may be prescribed, appeal to the Government or to such officer as the Government may specify in this behalf and the Government or the officer, as the case may be, may make such order in the case as it or he thinks fit".

Sub-s. (4) of s. 5 authorises the Government to issue directions to licensees generally or to any licensee in particular for the purpose specified by it. Section 6 confers powers on Government or local authority to suspend exhibition of films in certain cases; and s. 7 prescribes penalties. Section 8 empowers the State Government or the licensing authority to suspend, cancel or revoke a licence granted under s. 5, on one or more of the grounds indicated by clauses (a) to (g) of sub-s. (1). The

other sub-sections of s. 8 prescribe the procedure which has to be followed in exercising the powers conferred by sub-s. (1). Section 9 confers on the Government the power to make rules by a notification; this power can be exercised for any of the purposes mentioned in mentioned in clauses (a), (b) & (c) of the said section. Section 10 gives power to the State Government to exempt any cinematographs exhibition or class of cinematograph exhibitions from the operation of any of the provisions of the Act; and s. 11 provides that the Cinematograph Act, 1918 (No. 11 of 1918) in so far as it relates to matters other than the sanctioning of cinematograph films for exhibition, is hereby repealed. There is a proviso to this section with which we are not concerned in the present appeal. That, broadly stated, is the scheme of the Act.

There are two Central Acts dealing with the same subject. The first one is Act II of 1918 which, as we have seen, is repealed in the manner prescribed by s. 11 of the Act so far as the Punjab is concerned. Section 5 of this Act corresponds generally to s. 5 of the Act. The Central Act II of 1918 has been subsequently repealed by Central Act 37 of 1952. Section 12 of this latter Act corresponds generally to s. 5 of the Act.

The question which we have to decide in the present appeal lies within a very narrow compass. What appellant No. 1 has done is to require the licensing authority to forward to it all applications received for grant of licences, and it has assumed power and authority to deal with the said applications on the merits for itself in the first instance. Is appellant No. 1 justified in assuming jurisdiction which has been conferred on the licensing authority by s. 5(1) and (2) of the Act ? It is plain that s. 5(1) and (2) have conferred jurisdiction on the licensing authority to deal with applications for licences, and either grant them or reject them. In other words, the scheme of the statute is that when an application for licence is made, it has to be considered by the licensing authority and dealt with under s. 5(1) and (2) of the Act. Section 5(3) provides for an appeal to appellant No. 1 where the licensing authority has refused to grant a licence; and this provision clearly shows that appellant No. 1 constituted into an appellate authority in cases where an application for licence is rejected by the licensing authority. The course adopted by appellant No. 1 in requiring all applications for licences to be forwarded to it for disposal, has really converted the appellate authority into the original authority itself, because s. 5(3) clearly allows an appeal to be preferred by a person who is aggrieved by the rejection of his application for a licence by the licensing authority.

It is, however, urged by Mr. Bishan Narain for the appellants that s. 5(2) confers very wide powers of control on appellant No. 1 and this power can take within its sweep the direction issued by appellant No. 1 that all applications for licences should be forwarded to it for disposal. It is true that s. 5(2) provides that the licensing authority may grant licensing subject to the provisions of s. 5(1) and subject to the control of the Government; and it may be conceded that the control of the Government subject to which the licensing authority has to function while exercising its power under s. 5(1) and (2), is very wide; but however wide this control may be, it cannot justify appellant No. 1 to completely oust the licensing authority and itself usurp his functions. The Legislature contemplates a licensing authority as distinct from the Government. It no doubt recognises that the licensing authority has to act under the control of the Government; but it is the licensing authority which has to act and not the Government itself. The result of the instructions issued by appellant No. 1 is to change the statutory provision of s. 5(2) and obliterate the licensing authority from the Statute-book altogether. That, in our opinion, is not justified by the provision as to the control of Government prescribed by s. 5(2).

The control of Government contemplated by s. 5(2) may justify the issue of general instructions or

directions which may be legitimate for the purposes of the Act, and these instructions and directions may necessarily guide the licensing authority in dealing with applications for licences. The said control may, therefore, take the form of the issuance of general directions and instructions which are legitimate and reasonable for the purpose of the Act. The said control may also involve the exercise of revisional power after an order has been passed by the licensing authority. It is true that s. 5(2), in terms, does not refer to the revisional power of the Government; but having regard to the scheme of the section, it may not be unreasonable to hold that if the Government is satisfied that in a given case, licence has been granted unreasonably, or contrary to the provisions of s. 5(1), or contrary to the general instructions legitimately issued by it, it may suo moto exercise its power to correct the said order by exercising its power of control. In other words, in the context in which the control of the Government has been provided for by s. 5(2), it would be permissible to hold that the said control can be exercised generally before applications for licences are granted, or particularly by correcting individual orders if they are found to be erroneous; but in any case, Government has to function either as an appellate authority ar as a revisional authority, for that is the result of s. 5(2) and (3). Government cannot assume for itself the powers of the licensing authority which have been specifically provided for by s. 5(1) and (2) of the Act. To hold that the control of the Government contemplated by s. 5(2) would justify their taking away the entire jurisdiction and authority from the licensing authority, is to permit the Government by means of its executive power to change the statutory provision in a substantial manner; and that position clearly is not sustainable.

Section 5(3) provides for an appeal at the instance of the party which is aggrieved by the rejection of its application for the grant of a licence. No appeal is provided for against an order granting the licence; but as we have just indicated, in case it appears to the Government that an application has been granted erroneously or unfairly, it can exercise its power of control specified by s. 5(2) and set aside such an erroneous order, and that would make the provision as to appeal or revision self-contained and satisfactory.

The scheme of the Act clearly indicates that there are two authorities which are excepted to function under the Act - the licensing authority, as well as the Government. Section 8 is an illustration in point. It empowers the State Government or the licensing authority to suspend, cancel or revoke a licence on the grounds specified by it; and that shows that if a licence is granted by the licensing authority, it has the power to suspend, cancel or revoke such a licence just as Government has a similar power to take action in respect of the licence already granted. We are, therefore, satisfied that the High Court was right in coming to the conclusion that appellant No. 1 had no authority or power to require all applications for licences made under the provisions of the Act to be forwarded to it, and to deal with them itself in the first instance. Section 5 clearly requires that such applications must be dealt with by the licensing authorities in their respective areas in the first instance, and if they are granted, they may be revised by Government under s. 5(2); and if they are rejected, parties aggrieved by the said orders of rejections may prefer appeals under s. 5(3) of the Act. The basic fact in the scheme of the Act is that it is the licensing authority which is solely given the power to deal with such applications in the first instance, and this basic position cannot be changed by Government by issuing any executive orders, or by making rules under s. 9 of the Act.

It appears that this question has been considered by the Andhra Pradesh, and the Rajasthan High Courts and they have taken the view that the Government can, by virtue of the power of control, deal with the applications for licences themselves in the first instance [vide Karnati Rangaiah. v. A. Sultan Mohiddin and Brothers, Tadipatri & Ors. (A.I.R. 1957 A.P. 513.) and M/s. Vishnu Talkies. v. The State & Other ((1962) I.L.R. 12 Raj. 44.) respectively.] We are satisfied that this view does not correctly represent the true legal position under the relevant provisions of the Acts prevailing in the

two respective State. In Bharat Bhushan. v. Cinema and City Magistrate & Anr. (A.I.R. 1956 All. 99.) also, the powers of the State Government under s. 5(3) of the Cinematograph Act, 1918, have been similarly construed and that again, in our opinion, cannot be said to be right. In dealing with the question about the scope and effect of the power of control conferred on the State Government, the Allahabad High Court has taken the view that the power of control which has been conferred on the State Government by s. 5(2) is wide enough to enable the State Government to revise an order passed by a licensing authority granting a licence. This observation, in our opinion, correctly represents the true scope and effect of the power of control conferred on the State Government.

The result is, the appeal fails and is dismissed with costs.

Appeal dismissed.

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