

SUPREME COURT OF INDIA

PVR Limited

Vs.

State of Karnataka

C.A.No.10091 of 2010

(Ranjan Gogoi and N.V.Ramana JJ.)

25.03.2015

JUDGMENT

RANJAN GOGOI, J.

1. The appellant - PVR Limited - in Civil Appeal Nos. 10091 of 2010 and 10092 of 2010 is engaged in the business of exhibiting movies at various locations across the country including Bangalore. The appellant operates eleven (11) theaters in a multiplex at Bangalore for which it has been granted necessary permissions/approvals as well as requisite licence for exhibition by the 2nd respondent i.e. District Magistrate, Bangalore. The appellant had filed a writ petition before the High Court of Karnataka challenging, inter alia, a communication dated 2nd April, 2005 issued by the Principal Secretary to Government of Karnataka, Department of Internal Administration and Transport, Bangalore to the 2nd respondent informing the said respondent that theater owners and owners of M/s PVR Cinemas are required to obtain compulsory certificates from Films Division under the Karnataka Cinemas Regulation Act, 1994 (hereinafter referred to as "the Act") and under Rule 35(c) of the Karnataka Cinemas (Regulation) Rules, 1971 (hereinafter referred to as "the Rules") framed thereunder and to exhibit the films approved by the Films Division. An endorsement dated 28th May, 2005 requiring the appellant to obtain "Compulsory Certificate from Films Division" under the aforesaid Act and the Rules was also put to challenge in the writ petition filed. The effect of the aforesaid impugned orders, it may be noticed, is that the appellant before screening the regular movies in its theaters was required to exhibit documentary films produced by the Films Division only.

2. The writ petition was dismissed by a learned single judge of the High Court against which order the appellant had instituted Writ Appeal No.979 of 2006 (Cinema). The aforesaid writ appeal, on the grounds and reasons recorded in the order dated 16th November, 2006, was allowed in the following terms:

"25. Accordingly, the Writ Appeal is allowed. Order of learned Single Judge is set aside. Writ Petition is allowed. The impugned notice issued by the second respondent and the order passed by first respondent are quashed. Rule issued in the writ petition which was discharged by passing the impugned order is set aside and made absolute."

3. However, on 18th November, 2006, the matter was reconsidered by the Bench once again and the following order was passed: "We have already held that the documentary Films referred to supra produced by third respondent are not approved by the State Government 'from time to time' under Section 12(1)(c) of the Act read with relevant Rules and the impugned order and notice in the writ petition are quashed. We also made an observation to constitute the Advisory Board by the State Government under Rule 8 of the Rules. Since this process may take some time, in the meanwhile, it would be just and proper for this Court to give direction to the Licensing Authorities in the Karnataka State to incorporate the terms and conditions in the licenses that would be issued in favour of the licensees stating that the films including documentary which are enumerated under Clauses (a) to (c) of Section 12 of the Act that are produced by third respondent shall be screened in the theatres of licensees on such terms and conditions that may be imposed upon them which are not objectionable to the State Government. Ordered accordingly."

4. It is the aforesaid part of the order dated 16th November, 2006 pronounced on 18th November, 2006 that has been challenged by the appellant in Civil Appeal No.10091 of 2010. Insofar as the main part of the order i.e. dated 16th November, 2006 is concerned, the same has been challenged by the respondent No.3 in the Writ Appeal (Writ Appeal No.979 of 2006) in Civil Appeal No.10093 of 2010. The third appeal i.e. Civil Appeal No.10092 of 2010 challenges a separate order dated 18th April, 2007 passed in Writ Petition No.6222 of 2007 (Cinema) which essentially turns on the issues involved in the other two appeals. That is how all the cases were listed analogously and are being disposed of by this common order.

5. We have heard Mr. Shyam Divan, learned Senior Counsel appearing for the appellant in Civil Appeal No.10091 of 2010, Mr. Dinesh Kumar Garg, learned counsel appearing for the appellant in Civil Appeal No.10092 of 2010, Mr. R.S.

Suri, learned Senior Counsel appearing for the Union of India and Mr. V.N. Raghupathy, learned counsel appearing for the State of Karnataka.

6. The relevant provisions of the concerned statutory enactments that will require to be noticed may be set out hereunder:

"Section 12 of the Karnataka Cinemas (Regulation) Act, 1964.

12. Power of State Government to issue directions.- (1) The State Government may, from time to time, issue directions to any licensee or to licensees generally, requiring the licensee or licensees to exhibit,-

(a) such film or class of films having a scientific or educational value;

(b) such films dealing with news and current events;

(c) such documentary films, indigenous films, or such other films having special value to the public, as may have been approved by the State Government in that behalf from time to time.

(2) Where any directions have been issued under sub-section (1), such directions shall be deemed to be additional conditions and restrictions subject to which the licence has been granted:

Provided that no direction issued under this section shall require the licensee to exhibit any such film or films exceeding two thousand feet at, or for more than one-fifth of the entire time taken for, any one show.

Rules 8, 17, 18, 19, 20 and 35(c) of the Karnataka Cinemas (Regulation) Rules, 1971

8. Constitution of Film Advisory Board.- The State Government shall constitute a Film Advisory Board for the purpose of advising the State Government in the matter of approval of films under Section 12.

(2) The Film Advisory Board shall consist of:-

1. The Divisional Commissioner, Bangalore (Chairman)

2. The District Magistrate, Bangalore.

3. The Director of Public Instruction.
4. The Director of Collegiate Education
5. The Officer on Special Duty, Film Unit.
6. The Commissioner of Police, Bangalore.
7. Not less than three non-official members including a representative of the Karnataka Film Chamber of Commerce, appointed by Government.

17. Declaration in respect of film certified by the Central Government.- Film certified by the Central Government with the previous approval of the Central Film Advisory Board to be scientific films, films intended for educational purposes, films dealing with news and current events or documentary films or films of the type specified in Section 12 produced by the State Government or by a Corporation owned or controlled by the State Government or by an industrial undertaking of the State Government and certified by the Board of Film Censors may be approved by the State Government under Section 12 and the provisions of Rules 18 to 24 shall not apply to such films.

18. Application of the Board.- Any person, desirous of having any films approved by the State Government under Section 12 shall send an application in writing to the Chairman of the Film Advisory Board stating the title of the film and the source from which it can be obtained by exhibitors and such other particulars as may be required by the Film Advisory Board and shall also produce a copy of the film. He shall arrange to exhibit the film before the Advisory Board at Bangalore on the date and time to be fixed by the Board. Every such application shall be accompanied by the fee specified in Rule 21.

19. Action to be taken by the Board.- On receipt of an application under Rule 18, the Chairman shall arrange to have the film examined by the Film Advisory Board at its next meeting with a view to determining whether it could advise the State Government to approve the film under Section 12. If the applicant desires to make any representation in regard to the film concerned, the Film Advisory Board shall give him an opportunity to do so. Such representation shall be in writing and shall be taken into consideration

by the Film Advisory Board in making its recommendation to the State Government.

20. Approval of film by State Government.- The Film Advisory Board shall forward to the State Government within five days after the examination of the film under Rule 19, its recommendation as to whether the film may be approved by the State Government under Section 12. If after considering the recommendation of the Film Advisory Board and after making such enquiry as it deems fit, the State Government decides to approve the film, it shall notify the title of the film in the Karnataka Gazette together with the address of the persons, firm, organisation or Government with whom the licensee can enter into agreement for the supply of the film:

Provided that the State Government shall not approve any film that has not been certified as suitable for public exhibition by the Central Board of Film Censors under the Cinematograph Act, 1952 (Central Act 37 of 1952)

35. Application for Licence.- After obtaining the certificates referred to in Rule 34 the applicant may make his application for licence in writing to the licensing authority, the application shall be accompanied by-

(a)

.....

(c) a declaration by the applicant that he has completed all arrangements for obtaining films approved by the Central Government with the previous approval of the Films Division for exhibition at each performance together with a statement from the suppliers confirming that such arrangements have been made;"

The provisions of the Rules by virtue of Section 19(3) are deemed to have been made as if enacted under the Act.

7. The provisions of the Act and the Rules extracted herein above are unambiguous and self-explanatory. The State Government under Section 12 of the Act is vested with the power to issue directions to any licensee requiring him to exhibit the type of films mentioned in sub-clauses (a), (b) and (c) thereof as may have been approved by the State Government. Such directions, if issued, are to be deemed to be additional conditions of the licence granted. This is by virtue of sub-Section (2) of Section 12 of the Act.

8. Under Rule 8 of the Rules framed under the Act, the State Government is required to consider the advice of a Film Advisory Board for the purposes of approval of films under Section 12. Rule 8(2) prescribes the composition of the Film Advisory Board. Under Rule 17, films certified by the Central Government with the previous approval of the Central Film Advisory Board as scientific films; films intended for educational purposes; films dealing with news and current events or documentary films or films of the type specified under Section 12 may be approved by the State Government under Section 12 without resorting to the provisions of Rules 18 to 24. The aforesaid Rules i.e. Rules 18 to 24 deal with the manner of application to the Advisory Board for approval of films by the State Government on the advice of the Film Advisory Board. Rule 35 imposes the requirement on an applicant making an application for licence to furnish along with its application "a declaration by the applicant that he has completed all arrangements for obtaining films approved by the Central Government with the previous approval of the Films Division for exhibition at each performance together with a statement from the suppliers confirming that such arrangements have been made" [Clause (c)].

9. It is the correctness of the impugned communications dated 2nd April, 2005 and 28th May, 2005 that has to be tested against the aforesaid backdrop of the statutory provisions.

10. It is the case of the appellant that the documentary films that it had been exhibiting are not produced or certified by the Films Division but are made and supplied by different private sources. The averments in the writ petition indicate that while the appellant was screening such documentary films obtained from private sources, a notice dated 4th March, 2005 was received by the appellant from the 2nd respondent requiring the appellant to pay an amount of Rs.7,33,200/- (Rupees Seven Lakh Thirty Three thousand and Two hundred only) to the respondent No.3 under Rule 35(c) of the Rules failing which appropriate legal action was stated to be in contemplation. On a clarification being sought by the appellant as to the basis of the charges leveled, the appellant was informed by the 2nd respondent that the said amount of Rs.7,33,200/- (Rupees Seven Lakh Thirty Three thousand and Two hundred only) was on account of outstanding payable to respondent No.3 since educational and documentary films were being obtained by the appellant from a private supplier and not from the respondent No.3. Thereafter, on exchange of further correspondences in the matter, order dated 2nd April, 2005 was issued by the 1st respondent which was followed by the Notice/Communication dated 11th April, 2005.

11. Given the circumstances in which the aforesaid impugned action was taken and the notices were issued, as already noticed, the effect thereof is that the appellant was necessarily required to exhibit documentary films produced by the Films Division only.

12. Under Section 12 of the Act, the power of the State Government to issue directions with regard to the exhibition of documentary films is in respect of such films that are approved by the State Government. The reading of the provisions of the Rules earlier extracted would go to show that there are two modes in which such approval can be granted by the State Government. The first is on the basis of the advice of the Film Advisory Board; the second is by action taken under the provisions of Rule 17 in terms of which the State Government can, without the advice of the Board, approve films that are certified by the Central Government with the previous approval of the Central Film Advisory Board.

13. The purport and effect of Rule 35(c) may be noticed at this stage. Under Clause (c) of Rule 35, it is the duty of the applicant applying for a licence to enclose with his application a declaration that the applicant has completed all arrangements for obtaining films approved by the Central Government with the previous approval of the Films Division for exhibition along with a statement from the suppliers confirming that such arrangements have been made. Clause 35(c) does not vest any power in the State Government to issue any direction. On the contrary, it casts a duty on the applicant seeking a licence to submit a declaration that he has complied with the requirements contemplated therein.

14. Whether the appellant was exhibiting films obtained from private sources which are or not approved by the State Government is a matter of some controversy. The same, however, need not detain the court. Even assuming that the documentary films obtained from private sources exhibited by the appellant did not have the approval of the State Government the question has to be answered is whether the same would constitute sufficient justification on the part of the State Government to issue directions to the effect that the appellant should exhibit documentary films produced by the Films Division only. A consideration of the various provisions contained in the Act and the Rules including those extracted above do not indicate the availability of the power to the State Governments to issue any such blanket directions. The power conferred is to issue directions for exhibition of films approved by the State Government which approval, as noticed earlier, can be obtained in two different modes.

15. It is not in dispute that at the relevant point of time the State Advisory Board had not be constituted. It is also not in dispute that the said Board came into existence in the year 2007. However, what is not clear is whether the said Board continues to remain in office as on date. Be that as it may, if the Advisory Board was not available at the relevant point of time even the absence of such Board cannot clothe the State with the power to issue the impugned directions inasmuch as in that event the alternative mode of approval under Rule 17 has to be availed of.

16. So construed, we have no doubt that the initial order passed by the Division Bench allowing the Writ Appeal and setting aside the impugned notice was perfectly justified. The subsequent order passed on 18th November, 2006 virtually reverses the relief granted in the Writ Appeal and once again imposes the requirement on the appellant to exhibit documentary films produced by and procured from the Films Division only. In fact, the said requirement was directed to be made an express condition of the licence to be granted to theater owners including the appellant. We do not find any authority or sanction in any provisions of the Act/Rules to sustain the said later direction of the High Court.

17. However, as the order of the Division Bench clearly states that the impugned later direction is only during the interregnum i.e. valid till such time that the Advisory Board is constituted, there can be no doubt that if at present there is a Advisory Board functioning the said direction must cease to remain in force and consequently the conditions incorporated in the licence of the appellant to the said effect will have to be deleted. We order accordingly and further direct that if the Advisory Board is functioning as on date it will be open to all concerned including the appellant to seek approval under the provisions of Rules 18, 19 and 20 of the Rules of the documentary films it intends to exhibit.

18. Consequently, the part of the impugned order passed on 18th November, 2006 in reversal of the main part of the order dated 16th November, 2006 stands set aside and Civil Appeal No.10091 of 2010 is allowed to the extent indicated above.

19. Civil Appeal No.10093 of 2010 filed by the Union of India is consequently dismissed whereas Civil Appeal No.10092 of 2010 stands disposed of in terms of the order passed in Civil Appeal No.10091 of 2010.