

ORISSA HIGH COURT

Ranchhorlalji

Vs

Revenue Divisional Commissioner

O.J.C. No. 224 of 1958

(R.L. Narasimham, C.J. and S. Barman, J.)

21.10.1959

JUDGMENT

R.L. Narasimham, C.J.

1. This is a petition under Article 226 of the Constitution, challenging the validity of the appellate order dated the 2nd September, 1958 passed by the Revenue Divisional Commissioner, Northern Division, Sambalpur, maintaining the order of the District Magistrate of Sundargarh declining to renew the temporary license granted to the petitioner to exhibit cinema films in a temporary building at Rajgangpur.

2. Rajgangpur was formerly a village in Sundargarh district but it has gradually grown into a fairly big town consequent on the establishment of a Cement factory and other industrial concerns there. On the 1st January, 1951, the petitioner was first given a temporary license to exhibit cinema films at Rajgangpur. This license was renewed from time to time after the expiry of the usual period of three months and the last period of renewal expired on 31-12-57. The building where the cinema films were exhibited was a temporary structure but it appears that the petitioner was gradually trying to improve the condition of the same and in 1956 he replaced the wooden trusses with iron trusses erected on brick pillars. But the roof of the building still continued to be of a temporary character.

3. On the 17th September, 1957, the District Magistrate of Sundargarh granted the opposite party No. 4, Anagi Manjari Devi, a permanent license to exhibit cinema films in Rajgangpur in a building not far away from that of the petitioner. Consequently, when the petitioner applied in due course, for the renewal of his temporary license after its expiry on the 31st December 1957 the District Magistrate rejected the same saying that as there was formerly no permanent cinema house at Rajgangpur, the petitioner had been allowed to exhibit cinema films in a temporary structure, but as a permanent building had since been constructed and a permanent license granted to the opposite party no. 4 there was no necessity of renewing his temporary license. On appeal, the Revenue Divisional Commissioner, Sambalpur, while upholding the order of the District Magistrate, pointed out that after a personal inspection of the locality he was satisfied that the place where the petitioner had constructed his temporary structure was "eminently

unsuitable for a cinema house of any sort" but added that he would have no objection if the petitioner was granted a temporary license to exhibit cinema films at some other place in the town.

4. Mr. L.K. Das Gupta for the petitioner raised two contentions :-

(i) Sub-section (2) of section 5 of the Orissa Cinemas (Regulations) Act 1954 (Orissa Act 2 of 1954) conferred unrestricted and arbitrary power on the District Magistrate to grant or refuse to grant licenses for exhibiting cinema films and that the conferment of such unrestricted power offended the fundamental rights guaranteed to the petitioner under Article 19(1) (g) of the Constitution.

(ii) Even if the aforesaid Act be held to be valid, the order of the Revenue Divisional Commissioner Sambalpur on appeal was bad in law inasmuch as he has taken into consideration extraneous matters which are not relevant so far as the eligibility of the petitioner to a renewal of his license was concerned.

5. Exhibition of cinema films in India was first regulated by the Cinematograph Act, 1918 (Central Act 2 of 1918). Under that Act the District Magistrate was made the competent authority for the grant of license and section 5 of the Act stated that in granting a license that authority should see (i) that the rules made under the Act were substantially complied with, and (ii) that adequate precautions were taken for the safety of persons attending such exhibition. Subject to these two restrictions the licensing authority was given unfettered discretion to grant a license "to such persons as it thinks fit and on such terms and conditions and subject to such restrictions as it may determine." In exercise of the powers conferred by the aforesaid Act, the Government of Orissa made the Orissa Cinematograph Rules 1939. These Rules contained detailed provisions for ensuring the safety and convenience of persons attending cinema shows. The building in which the films were shown were required to comply with certain specifications and furthermore there were provisions regarding the extent of the accommodation in the auditorium, sanitation, exits, gangways, staircases, etc. Provision was also made for precautions against fire especially of the films. The nature and type of electrical installations in the cinema house was also regulated by special provisions. The licenses were divided into two classes, namely, temporary licenses available for three months at a time and annual licenses available for one year at a time. Different scales of fees were fixed for the two classes of licenses and it was further provided that annual licenses shall not be granted unless the building is constructed of non-inflammable materials. After the coming into force of the Constitution the Parliament passed another Act entitled the Cinematograph Act 1952 (Act 37 of 1952) by which the provisions of Act 2 of 1918 were partially repealed in Part A and Part B States. Thereupon the Orissa Legislature passed another Act known as the Orissa Cinemas (Regulation) Act, 1954 (Orissa Act 2 of 1954) which is, for all practical purposes, identical with the Cinematograph Act of 1918. The only material change is the provision of an appeal (see sub-section (3) of Section 5 of the Orissa Act) against the order of the licensing authority refusing to grant a license. The rule-making power under the Orissa Act (sub-section (1) of Section 9) is also similar to the rule-making power under the Central Act (sub-section (1) of Section 8).

The Orissa Act repealed the surviving provisions of the Central Act of 1918 but as no rules were framed under the Orissa Act, except in respect of the determination of the appellate authority -

vide sub-section (3) of section 5 the Orissa Cinematograph Rules, 1939 (made under the Central Act of 1918) continued to remain in force by virtue of section 24 of the General Clauses Act.

6. Sub-sections (1) and (2) of Section 5 of the Orissa Act are as follows :-

"5. (1) The licensing authority shall not grant a license under this Act unless it is satisfied that -

(a) the rules made under this Act have been substantially complied with; and
(b) adequate precautions have been taken in the place in respect of which the license is to be given, to provide for the safety of persons attending exhibitions therein.

(2) Subject to the foregoing provisions of the section and to the control of the State Government, the licensing authority may grant licenses under the Act to such person as that authority thinks fit, and on such terms and conditions and subject to such restrictions as it may determine."

7. Section 9 which deals with the rule-making power may also be quoted :-

"9. (1) The State Government may, by notification, make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, rules made under this Section may provide for -

(a) the terms, conditions and restrictions, if any, subject to which license may be granted under this Act :

(b) the regulation of the cinema exhibitions for securing the public safety :

(c) the fees to be levied for licensing places for cinema exhibition, and

(d) the time within which and the conditions subject to which an appeal under sub-section

(3) of section 5 may be preferred."

8. Mr. Das Gupta's first contention is that sub-section (2) of Section 5 confers unfettered discretion on the licensing authority to grant license to "any person on such terms and conditions and subject to such restrictions as it deems fit" and such a provision imposes an unreasonable restriction on the fundamental right of a citizen to carry on his business of exhibiting Cinema films and is not saved by clause (6) of Article 19 of the Constitution. He tried to reinforce this argument by saying that the State Government have not made rules for guiding the discretion of the District Magistrate in respect of the determination of the terms and conditions and the restrictions subject to which a license may be granted, though such rule-making power was expressly conferred by clause (a) of Sub-section (2) of Section 9 of the Act. According to him, the provisions of the Orissa Cinematograph Rules, 1939, deal primarily with the safety of persons attending exhibitions which has already been provided for in clause (b) of Sub-section (1) of Section 5 of the Orissa Act and as respects other important matters such as the determination of priority as amongst rival applicants for licenses, the principles on which the discretion to grant licenses should be exercised and similar matters, both the Act and the Rules are entirely silent. Consequently, it is left to the unfettered discretion of the District Magistrate to grant or refuse to grant a license to anyone, according to his own choice, as a result of which

there is not only an unreasonable restriction on the right of a citizen to carry on his business, but the Act also permits unreasonable discrimination between one citizen and another, thereby offending Article 14.

9. The constitutionality of the various statutes which confers power on an authority by the issue or renewal of permits or licenses, to regulate certain classes of trade or business has been discussed in several decisions of the Supreme Court commencing from the well-known Madhya Pradesh Bidi case (*Chintaman Rao v. State of Madhya Pradesh*¹) and the law on the subject has been authoritatively laid down. Their Lordships of the Supreme Court held that the fundamental right of a citizen to carry on any business or trade can be abridged only by restrictions which are reasonable, as permitted by clause (6) of Article 19. The test of reasonableness should be applied to each individual statute and no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases.

"The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied, the disproportion of the imposition, and the prevailing conditions of the time - should all enter into the judicial verdict." See *State of Madras v. V. G. Rao*², followed in *Arunachala Nadar v. State of Madras*³ In the Madhya Pradesh, Bidi case AIR 1951 SC 118 their Lordships held that the imposition made by the impugned statute was excessive and beyond what was required in the public interest and hence that provision of the statute was struck down as unconstitutional. In an earlier decision *Rashid Ahmed v. Municipal Board Kairana*⁴, the provisions of bye-laws 2 and 4 of the Municipal Board of Kairana made under the U. P. Municipalities Act of 1916, were held to impose an unreasonable restriction inasmuch as they authorised the Board to grant a monopoly in a particular business to a particular person and made no provision for the issue of a license to other persons who may desire to carry on that business.

In a later decision, *T. B. Ibrahim v. Regional Transport Authority Tanjore*⁵, where the provision of a statutory rule authorizing a municipality to shift a bus stand from one place to another, was challenged as imposing an unreasonable restriction, their Lordships repelled that argument in the following terms :

"It cannot be denied that the appellant has been prohibited from carrying on the business of running a bus stand. What has been prohibited is that the bus stand existing at the time on a particular site being unsuitable from the point of view of public convenience, it cannot be used for picking up or setting down passengers from that stand for outstation journeys There is no fundamental right in a citizen to carry on the business wherever he chooses and his right must be subject to any reasonable restrictions imposed by the executive authority in the interests of public convenience Whether the abolition of the stand was conducive to public convenience or not, is a matter entirely for the Transport Authority to judge, and it is not open to the Court to substitute its own opinion for the opinion of that authority which is in the best position, having

regard to its knowledge of the local conditions, to appraise the situation."

This decision thus clearly lays down that though a citizen has a right to carry on a business, he has no fundamental right to carry on that business at a particular place chosen by him, and it may be open to the local authority, in the interest of public convenience, to prohibit the carrying on of that business at that particular place.

10. There are several later decisions of the Supreme Court in which the various tests to be applied to decide whether the restrictions imposed by a statute are reasonable or not, have been laid down. Thus in *Cooverji B. Bharucha v. Excise Commissioner, Ajmer*⁶ the control of liquor trade by the issue of a license was held to be constitutional and at page 223 of the report, their Lordships made the following observation :

"The nature of the business is therefore an important element in deciding the reasonableness of the restrictions. The right of every citizen to pursue any lawful trade or business is obviously subject to such reasonable conditions as may be deemed, by the governing authority of the country, essential to the safety, health, peace, order and morals of the community. Some occupations by the noise made in their pursuit, some by the odours they engender, and some by the dangers of accompanying them, require regulations as to the locality in which they may be conducted." In *Dwarka Prasad v. State of U. P.*⁷, the provisions of clause 3(2) (5) of the U. P. Coal Control Order, 1953, were held to impose an unreasonable restriction inasmuch as that clause conferred absolute power on an authority to grant or refuse to grant renewal or refuse to renew, suspend, revoke, cancel or modify any license under that order. Their Lordships observed that no rules had been framed and no directions had been given to regulate or guide the discretion of the licensing authority and there was also no provision for a higher authority to examine the propriety of the order of the lower authority and to revise or review its decision.

A few days later, in another case (from Rajasthan) *State of Rajasthan v. Nath Mal*⁸, their Lordships held that the freezing of stocks of food-grains under the provisions of clause 25 of the Rajasthan Food-grains Control Order, 1949, was valid inasmuch as the discretion of the competent authority to freeze food grains was guided by section 3 of the Essential Supplies Act whose object was to secure an equitable distribution and availability, at fair prices, and to regulate the transport, distribution, acquisition and disposal of an essential commodity like food-grains (which was not then easily available). Again in *Harishankar Bagla v. M. P. State*⁹, clause 3 of the Cotton Textiles (Control of Movement) Order 1948 was held to be valid even though that clause conferred full power on the Textile Commissioner to regulate by grant of permits the transport of cotton goods. The power exercised under that order was derived from section 3 of the Essential Supplies (Temporary Powers) Act and their Lordships Held that the Preamble of the Act was clear and afforded sufficient guidance to the Central Government, in exercise of the power under Section 3 of that Act. In *Babul Chandra v. Chief Justice and Judge of the Patna High Court* AIR 1954 SC 524, the Supreme Court held Rule 10 of the Bar Council Rules of the Patna High Court to be valid, even though that Rule conferred unfettered discretion

on the High Court to enrol or refuse to enrol any person as an Advocate entitled to practise before it. Though no specific provision was made either in the Act or in the Rules to guide the exercise of such discretion by the High Court their Lordships of the Supreme Court thought that the conferment, in circumstances, of absolute discretion on the highest court of Justice in the State was reasonable. In *Tahir Hussain v. District Board, Muzaffarnagar*¹⁰ a bye-law made by the District Board of Muzaffarnagar under the U. P. District Boards Act 1922 was struck down as unconstitutional because, instead of regulating the holding of markets it prohibited persons from establishing any cattle market in the District and, as such, it amounted to an unreasonable restriction. In *R. M. Seshadri v. District Magistrate Tanjore*¹¹ (a) of the license granted to a person for exhibiting cinema films was held to be an excessive invasion on the fundamental right and that the discretion conferred on the licensing authority was unrestrained, and unfettered and must lead to an unjustifiable interference with the licensee to carry on his business. In *Ganpati Singhji v. State of Ajmer*¹² the power given to a District Magistrate to revoke a permit "without assigning any reason or giving any previous notice" was held to be unconstitutional as it was an absolute and arbitrary power uncontrolled by any principle. In *Pannalal Binjraj v. Union of India*¹³, there was a discussion of the constitutionality of a statutory power conferring discretion on a public authority and at page 410 of the report their Lordships observed as follows :

"There is a broad distinction between discretion which is to be exercised with regard to a fundamental right guaranteed by the Constitution and some other right which is given by a statute. If the statute deals with a right which is not fundamental in character the statute can take it away, but a fundamental right the statute cannot take away. Where for example discretion is given in the matter of issuing licenses for carrying on a trade or profession or business, or where restrictions are imposed on freedom of speech etc., by the imposition of censorship, the discretion must be controlled by clear rules as to come within the category of reasonable restrictions." In *Bhatnagars and Co. Ltd. v. Union of India*¹⁴, it was further pointed out that the Preamble and other provisions of the impugned Act may be looked into with a view to decide whether the discretion conferred on an authority was unfettered and arbitrary, or was regulated by principles.

11. I now come to the well-known case of *Ramkrishna Dalmia v. S. R. Tendolkar*¹⁵ where all the previous decisions were reviewed and some broad principles were formulated with a view to test the reasonableness of the classifications for the purpose of legislation, having regard to the fundamental rights guaranteed by Article 14 of the

Constitution. It is unnecessary to refer to all the principles laid down in that case and it will be sufficient if I refer to three of them (mentioned in pages 548 and 549 of the report). They are :

(i) A statute may not make any classification of the persons or things for the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify the persons or things to whom its provisions are to apply. In determining the question of validity or otherwise of such a statute the Court will not strike down the law out of hand only because no such classification appears on its face, or because a discretion is given to the Government to make the selection or classification, but will go on to

examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of selection or classification. (If no such principle or policy is laid down the statute will be declared unconstitutional on the ground that it gives arbitrary and uncontrolled power to the Government).

(ii) A statute may not make a classification of the persons or things for the purpose of applying its provisions and may leave it to the discretion of the Government to select and classify the persons or things to whom its provisions are to apply, but may at the same time lay down the principle or policy for the guidance of discretion by the Government in the matter of such selection or classification. The Court will uphold the law as constitutional.

(iii) A statute may not make a classification of the persons or things to whom its provisions are intended to apply and (may) leave it to the discretion of the Government to select or classify the persons or things for applying those provisions according to the policy or principle laid down by the statute itself, for the guidance of the exercise of discretion by the Government in the matter of such selection or classification. If the Government, in making the selection or classification does not proceed on or follow such a policy or principle, it has been held by this Court in *Kathi Raning Rawat v. State of Saurashtra*¹⁶ that in such a case the executive action but not the statute, should be condemned as unconstitutional. It is true that the aforesaid decision deals with the reasonableness of the classification for the purpose of Article 14 of the Constitution, but the principles are equally applicable in testing the reasonableness of a restriction under Article 19(6) of the Constitution also.

12. From the aforesaid decisions of the Supreme Court the following conclusions clearly emerge : A statute cannot be struck down as unconstitutional merely because it confers wide discretion on an authority to regulate certain classes of trade or business, by issuing permits or licenses. It is only when no policy or principle has been laid down either in the Preamble or in the other provisions of the statute or statutory rules, and the impugned provision confers arbitrary or excessive powers on the authority, that it is liable to be struck down. The nature of restrictions imposed will necessarily vary with the nature of the business. Restrictions on the carrying on of business in respect of "normally available" commodities should not be as drastic as those in respect of a business or occupation which is likely to cause nuisance or danger to the public. No one has a fundamental right to carry on any business at a particular place chosen by him and a local authority should have discretion to change the place in the interests of public convenience or safety. The authority chosen for the exercise of discretion, under a statute, is also a material factor. Thus the highest judicial tribunal in the State, namely the High Court may confer unfettered discretion by a statute as regards the enrolment of Advocates and yet that statute may not be unconstitutional. The power to regulate the carrying on of a business cannot be used for the purpose of prohibiting the carrying on of that business. One of the important tests to determine whether the restrictions are reasonable or not, is whether there is a provision for a superior authority to examine the propriety of the order of the lower authority and revise or review its decision.

13. These principles have been applied in several decisions of the High Courts also. In

*Vallinayagam v. State of Madras*¹⁷ an order of Government directing the licensing authority to restrict the number of touring cinemas at places where there were already permanent cinemas with a view to prevent unhealthy competition and to ensure public safety, was held to be constitutional. In *C. S. S. Motor Service v. Madras State*¹⁸, the provisions of section 47 of the Motor Vehicles Act were held to be constitutional. This case has special application to the instant case inasmuch as, there, one of the points taken up was that section 47 of the Motor Vehicles Act did not contain any provision guiding the discretion of the authority to choose from amongst rival claimants for a permit. The absence of such a provision was held not sufficient to make it unconstitutional. I may quote the following passage (at page 292) :

"A more difficult question is - when the number of vehicles is limited under section 48(a) and there are several applicants for the permit, how is the choice to be made? The Act contains no provisions relating to this question. The provisions of Section 47 (1) do not cover this aspect. It is argued that as no criteria are laid down in the Act for making selection amongst the numerous applicants the power to grant permits becomes arbitrary and vague and is therefore void. Reliance is placed on the decision in *Yick Wo v. Hopkins*¹⁹

But as already mentioned under the Act transport authorities are acting judicially and not administratively in granting or refusing to grant permits. Section 47(1) mentions the matters by which transport authorities are to be guided in disposing of the applications: Section 57(7) provides the authority must give reasons in case of refusal and under section 64 his order is appealable. In *Sri Rama Vilas Service Co. Ltd v. Road Traffic Board, Madras*²⁰, these proceedings were held to be judicial and therefore the provisions of the Act are not open to the objections which were upheld in (1886) 30 Law Ed. 220. The only consequence that results from the absence of criteria in the Act itself, is that the validity of every one of the orders will have to be determined on its own merits, and on a consideration whether it satisfies the requirements of Article 19(6). That is to say, whether it is reasonably made in the interests of the public."

14. I may also refer to a recent decision of the Bombay High Court in *Govindji Vithaldas Co. v. Municipal Commissioner, Ahmedabad*²¹, which (if I may say so with respect) gives a new approach to the question. There it was pointed out that even if a statute conferred unfettered discretion on an authority to issue or withhold a license or permit, such discretion according to the well known principles of statutory construction, cannot be held to be either "arbitrary or unfettered or unbridled."

Even though the legislature may not indicate the nature of the discretion and how it should be exercised the principles of law which are well settled must be imported into the consideration of the question as to what discretion the Legislature conferred on the authority. The observations in Maxwell, Tenth Edition, at page 123, were quoted. In that case the power conferred on the Municipal Commissioner of Ahmedabad to issue or withhold the issue of licenses to carry on timber business within a municipality was held to be constitutional inasmuch as it was meant to effectuate the policy of the law which was to regulate all business which are likely to be a nuisance in its widest sense. In a later decision of the same High Court, *Sunder Dumanna Shetty v. K. D. Billimoria*²², while following AIR 1959 Bombay 26, it was further pointed out that even though there may be no right of appeal against an order refusing the grant of a license the provision for general control and supervision conferred on the State Government may itself

amount to a safe-guard against an arbitrary and capricious exercise of that power.

15. In *Satya Ranjan v. Commissioner of Police, Calcutta*²³, and in *Kishan Chand v. Commissioner of Police, Calcutta*²⁴ the provisions of a statute providing for the issue of a license to regulate certain trades were held to be valid. In the latter case, a distinction was drawn between issue or renewal of a license on the one hand and the cancellation of a license already issued during the period of its validity, on the other.

16. Mr. Das Gupta cited an Allahabad decision, *Municipal Committee. Lucknow v. Iqbal Singh*²⁵, where it was held that the fixing of the maximum number of rick-shaws plying in a Municipality amounted to an unreasonable restriction. This decision, however, has no application to the instant case. Here neither the Government nor the licensing authority fixed the maximum number of cinema houses that could be constructed in Rajgangpur Town.

17. If the impugned provisions are examined in the light of the aforesaid decisions, there can be no doubt about their constitutional validity. Firstly, it will be noticed that the discretion to grant or refuse to grant license, conferred by sub-section (2) of Section 5 of the Orissa Act is controlled by the preamble which says that the Act was intended to regulate the exhibition of films. It is well known that the power to regulate does not ordinarily include the power to prohibit. The Revenue Divisional Commissioner also did not completely prohibit the petitioner from exhibiting cinema films in Rajgangpur, but only stated that he will not be permitted to exhibit films at the place chosen by him. Secondly the power is controlled by the Rules made or deemed to be made under the Act providing for the safety and convenience of the persons attending the cinema. It is true that the Rules are not exhaustive and many matters such as the principles to be followed in making selection from amongst rival applicants for license or in selecting the place where the holding of Cinema films may be permitted, are not covered by the Rules. But it is impossible to frame rules dealing with all matters which may be relevant for the purpose of deciding whether a license should be granted to a particular applicant or not, and wide discretion must necessarily be given to the licensing authority. Moreover, as pointed out in AIR 1953 Madras 279 (already cited) the absence of specific rule regarding the principles to be followed in making a selection from rival applicants for licenses, will not invalidate the statute itself. Thirdly, the authority chosen for the purpose of granting license is not a subordinate official but an officer holding the rank of District Magistrate. Lastly, most effective check on any apprehended exercise of arbitrary discretion by the licensing authority is provided by the right of appeal given in sub-section (3) of Section 5. The licensing authority is therefore bound to give reasons while rejecting an application for license and those reasons will be subject to the objective test of a superior authority. I must, therefore, hold that sub-section (2) of Section 5 of the Act is not unconstitutional even though the Cinematograph Rules are not exhaustive.

18. The second contention of Mr. Das Gupta also cannot prevail. I have already shown that the Revenue Divisional Commissioner has not completely prohibited the exhibition of films by the petitioner in any other place at Rajgangpur. He only observed, after personally inspecting the spot, that the particular place in respect of which license was applied for, was most unsuitable for the purpose, but expressly stated in his order that it was open to the petitioner to apply for a temporary license at another place. On the question as to whether a particular place is suitable or not to carry on a particular trade or occupation, the opinion of the local officers must be taken as

decisive, specifically when it is based on local inspection. Moreover, it is well known that the location of a cinema house in a town does cause some nuisance, specially to the residents living close by and there is also risk of fire. Mr. Das Gupta however urged that the cinema house was permitted to be put up in that place in 1951 and it cannot be held unsuitable for that purpose, now, after the lapse of so many years during which the temporary license was extended at regular intervals. It should be remembered, however, that Rajgangpur is a steadily growing town. A place or locality which might have been considered suitable in 1951 for holding cinema films shows when the town was small, may not be suitable in 1957 when it has grown appreciably - specially, when, as observed by the Commissioner, there is a school close by.

19. The question of unfair discrimination between the petitioner on the one hand and opposite party No. 4 on the other does not really arise. The latter was given a permanent license to exhibit films in a permanent building. The petitioner was holding only a temporary license. It is true that he made some, improvements to his building but the roof is admittedly still of a temporary character. The two are not similarly placed.

20. It was further urged that the petitioner had applied for permanent license as early as 29th August 1951 (Annexure 1 to the petition). On behalf of the State of Orissa the receipt of this application was denied. But whether this document is genuine or not there is no doubt that the petitioner never pressed for the grant of a permanent license to him after fulfilling all the conditions for the grant of such a license. The Revenue Divisional Commissioner rightly pointed out that so long as a permanent cinema house was not located in the town the temporary license granted to the petitioner was being renewed from time to time, even though it involved some risk to public safety, but since a permanent building was put up there was no necessity for continuing the temporary license and the attending risks also.

21. I see therefore no unconstitutionality either in the Orissa Act 11 of 1954 or in the appellate order dated 2nd September 1958 passed by the Revenue Divisional Commissioner, Northern Division. Sambalpur.

22. The petition is accordingly dismissed with costs. Hearing fee is assessed at Rs. 200/- (Rupees two hundred only) to be apportioned equally between opposite parties 1, 2 and 3 on the one hand and opposite party No. 4 on the other.

Barman, J.

23. I agree.

Petition dismissed.

Cases Referred.

¹ AIR 1951 SC 118

² AIR 1952 SC 198 (200)

³ AIR 1959 SC 300

⁴ AIR 1950 SC 163

⁵ AIR 1953 SC 79

- 6 AIR 1954 SC 220
- 7 AIR 1954 SC 224
- 8 AIR 1954 SC 307
- 9 AIR 1954 SC 465
- 10 AIR 1954 SC 630
- 11 AIR 1954 SC 747, condition 4
- 12 AIR 1955 SC 188
- 13 AIR 1957 SC 397
- 14 AIR 1957 SC 478
- 15 AIR 1958 SC 538
- 16 AIR 1952 SC 123
- 17 AIR 1952 Mad 528
- 18 AIR 1953 Mad 279
- 19(1886) 30 Law Ed. 220
- 20(1948) 1 Mad LJ 85
- 21 AIR 1959 Bom 26
- 22 AIR 1959 Bom 346
- 23 AIR 1955 Cal 417
- 24 AIR 1959 Cal 123 (127)
- 25 AIR 1958 All 853