

Channaveerappa Vs. State of Karnataka and Another

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Court : Karnataka

Decided On : Jul-11-1997

Reported in : AIR1998Kant109; 1998(1)KarLJ97

Judge : Hari Nath Tilhari, J.

Acts : Karnataka Cinemas (Regulations) Act, 1964 - Sections 4, 5, 7, 8, 9, 12, 13, 14 and 19; Karnataka Exhibition of Films on Television Screen Through Video Cassette Recorder (Regulation) Rules, 1984 - Rule 4; [Constitution of India](#) - Article 226; Karnataka Cinema Regulations Act, 1965 - Sections 14

Appeal No. : Writ Petition No. 15195 of 1991

Appellant : Channaveerappa

Respondent : State of Karnataka and Another

Advocate for Def. : Smt. Bharathi Nagesh, Government Advocate

Advocate for Pet/Ap. : Sri B.A. Lokesh, Adv.

Judgement :

ORDER

1. Heard the petitioner's Counsel Sri B.A. Lokesh, the learned Government Advocate representing the respondents 1 and 2, in the writ petition.

2. The facts of the case in nutshell are that as per allegations made in the writ petition, the petitioner intended to start the video parlour and with that intention, he made an application to the District Magistrate (Additional), Raichur District, Raichur, on 18-3-1989 and 4-10-1990, for the grant of licence to exhibit films on Television Screen through VCR at House No. 1-2-1993/1-2-1979, at Devadurga Town, Raichur District. According to the petitioner, acting under the Rules of 1984, the respondent 2, called for the report from the concerned authorities as required under the Rules of 1984, that is the Karnataka Exhibition of Films on Television Screen through Video Cassette Recorder (Regulation) Rules, 1984, hereinafter referred to as 'Rules 84' and the concerned authorities submitted the reports. The petitioner's case is that he had invested his life savings on the video parlour to comply with the requirements of the rules. Petitioner had been called for the licence being granted, but instead of licence being granted, the petitioner was intimated by respondent 2, as per endorsement that his application for grant of the licence to run the video parlour in Devadurga Town, was rejected until further orders of the Government by 2nd respondent's order dated 29-5-1991. It was mentioned and indicated in the preamble of the order that the Commissioner and Secretary to Government of Karnataka, Home Department, vide their letter No. H.D. 66 CNA 91, dated 26-03-1991, had directed the authorities not to issue fresh licences nor to renew the licenses to video parlour pending repealment of Karnataka Exhibition of Films on Television Screen through VCR (Regulation) Rules, 1984 or until further orders.

This is the reason on the basis of which the application of the petitioner for the aforesaid licence had been rejected.

3. Feeling aggrieved from the aforesaid order dated 29-5-1991, of the learned District Magistrate at Annexure-A, the petitioner has filed this petition under Article 226 of the [Constitution of India](#). It may be mentioned here that the petitioner has annexed the copy of the letter of the Government of Karnataka, issued from the Office of the Commissioner and Secretary, to all the District Magistrates, as Annexure-B, to this writ petition and Annexure-B, shows that in 1991, in view of certain policy decisions being taken by the Government and announced by the Chief Minister in his budget speech on 11-3-1991, the Secretary, Home

Department of the Government of Karnataka, issued directions to the District Magistrate not to issue fresh licence nor to renew the licence to the parlours pending repealment of Karnataka Exhibition of Films on Television Screen through VCR (Regulation) Rules, 1984 or until further orders. Therefore, the petitioner has challenged the vires act, legality of Annexure-B as well as asserted in the petition that this communication is altogether illegal.

4. On notice being issued to the respondents and counter affidavit/statement of objections supported by an affidavit had been filed on behalf of respondents 1 and 2. There is no dispute that the petitioner had applied for grant of licence to run the video parlour. There is no dispute as per counter affidavit with reference to the allegations that the application was rejected on account of directions issued by the Secretary of the Home Department of the State of Karnataka, Annexure-B, to the effect that no fresh licence be granted for video parlours, nor the licences already issued be renewed.

5. In the counter affidavit, the further stand has been taken that the Government has got wide powers to issue general instructions with regard to grant of licence as per Section 19 of the Karnataka Cinema (Regulation) Act, 1964 and the directions issued by the Government have been having regard to the provisions of the Act and those directions were in accordance with the law and did not suffer from want of jurisdiction or authority to issue the directions nor illegal. In the counter, it has been stated that the State Government has acted in doing so within its authority and right to repeal any act or rule. There is no doubt that petitioner-institution has got his right to do business under Article 19(1)(g). It has been asserted that the directions which have been issued as per Annexure-B, to the petitioner-institution were justified and were the result of functioning of the Government within its power and so, they had not suffered from any illegality and on that basis in the counter affidavit, it is said that the writ petition is misconceived and it deserves to be dismissed.

6. On behalf of the petitioner, Sri Lokesh, submitted that the petitioner has got right to carry on the profession or trade or business including the running of the video parlour and of exhibiting the films through cinema screen by video cassettes, no

doubt, subject to the licence being granted. Learned Counsel contended that the petitioner made an application for grant of licence. Learned Counsel contended that the permission may be refused, no doubt by reasons in writing, if there is any non-compliance with the requirements of law under the Act and Rule, but the Government cannot take an arbitrary decision that no licence shall be granted. Learned Counsel Sri Lokesh, contended that, Rules of 1984, if Government was intending to repeal those rules and it could not say or direct simply on that basis that licenses should not be granted or licenses granted earlier should not be renewed and such an order, as such at Annexure-B, is illegal and without jurisdiction and the order of refusal to grant licence, on the basis of the endorsement issued by the Government, passed by the District Magistrate is also bad and results in refusing to exercise jurisdiction vested.

7. The learned Counsel in support of his contentions made a reference to the Single Judge decision of this Court in the *Sangamesha v State of Karnataka and Another*. Smt. Bharati Nagesh, the learned Government Advocate, representing the opposite parties contended that there is a right to repeal and when Government took a stand to repeal those rules, it is probable and permissible to issue a direction that fresh licence or licence already being renewed. The learned Counsel referred to Section 19 of the Karnataka Cinema Regulations Act, referred in as the Cinema Regulations Act, she made in particular, reference to clauses (a) and (d) of sub-section (2) of Section 19.

8. I have applied my mind to the contentions made by the learned Counsels for the parties. It has to be taken note of the direction that has been issued by the Government is that there is the matter pending for consideration for repeal of rules of 1984, namely, Karnataka Exhibition of Films on Television Screen through VCR Regulations, 1984, for short, the VCR Regulations, 1984, so no licence is to be issued. When the rules have to be repealed is not clear and whether rules had to be repealed or not is yet to be the subject-matter of decision and for consideration.

9. Karnataka Cinema Regulations Act, 1964, for short, 'Act, 1964', which makes provision for regulating the exhibition by means of cinematographs and for licensing of the place in which cinematograph may be exhibited in the State of

Karnataka, operates and extends to the whole State. Section 4 of the Act specifically provides for cinematograph exhibitions to be licensed and it provides that, save as otherwise provided in this Act, no person shall give exhibition by means of cinematograph elsewhere than in a place licensed under the Act, and that he shall not exhibit otherwise, than the conditions imposed in such licences, whereas under Section 5, that if a person intends to give exhibition of the cinematograph, he shall make an application in writing to the licensing authority with particulars as may be prescribed and then, it is provided that the licensing authority, after consulting with the authorities concerned, as may be prescribed, may grant the licence to such persons subject to provisions of the rules and on such terms and conditions as it may determine. It has further been provided that licensing authority may refuse to grant the license, but it may have to indicate the reasons for refusal of the license.

10. Section 6 provides for the matters to be considered by the licensing authority, while deciding the question, if the licence is to be granted or to be refused and those considerations are interest of general public or suitability of the place proposed for exhibition, i.e., cinematograph exhibition, the adequacy of existing place for exhibition and the benefit to the particular locality and localities to be afforded.

11. Section 8 provides that licensing authority shall not grant the licence unless it is satisfied about the substantial compliance of the rules made under the Act, about adequate precautions, which are to be taken in the place in respect of which the licence is sought with reference to provisions for safety, convenience of and comfort of person attending exhibition therein, and extent or limit regarding number of places for the area that it does not exceed prescribed and determined in Section 7. The Act further provides appeal against decisions given by the authorities under Sections 5 and 9 of the Act.

12. Under Section 12 of the Act, the power has been given to the State Government to issue directions. It will be profitable to quote Section 12 in extenso:

'12. Power of State Government to issue direction.--(1) The State Government may, from time to time, issue directions to any licensee or 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'.

13. This section per se is very clear and indicates what directions, the State Government can issue under Section 12 in regard to what matters and the State Government's powers under Section 12 appear to be confined to those matters and by proviso also, the limit has been placed on the exercise of that power. Directions with respect to exhibitions of certain categories of films mentioned in clauses (a), (b) and (c) of Section 12, can be issued by the Government that those films could be exhibited. The direction which has been issued in the present case as per Annexure-B, does not appear to be covered by Section 12.

14. Section 13 of the Act deals with the power of the licensing authority to issue certain directions to licensee or licensor in general. Section 14 of the Cinema Regulations Act further confers power on the Government to issue orders of general character in respect of matters relating to licence. This power which has been conferred on the Government is subject to the provisions of the Act and the Rules made therein. Section 14 reads as under:

'Section 14. Power of the State Government to issue orders and directions of general character in respect of matters relating to licences.--The State

Government may subject to the provisions of this Act and the rules made thereunder, issue to the licensing authority such orders or directions of general character as it may consider necessary in respect of any matter relating to licences for exhibition of cinematograph films and that the licensing authorities shall give effect to such orders or directions'.

A reading of this Section per se confers the power, which has been given to the Government to issue orders of general character or directions of general character is subject to the provisions of the rules existing.

15. The directions of general character may be given with relation to the licences, no doubt, licences for exhibition of cinematograph films and the directions have to be given effect to by the authorities. A reading of this section, that is Section 14 per se reveals that the licensing authority cannot say that no licence shall be granted irrespective of the fact that the applicants satisfy the requirements of the provisions of the Act and the Rules, as it is intended to repeal those rules. The directions or orders can be issued which may be supplementary and complimentary to the purpose for which the Act and Rules are framed and the rules may be considered or and other circumstances may be considered which may even have been indicated in the rules before granting application or refusing application, but it does not mean that the Government has got blanket powers to say that no exhibition of the cinema should be done, no licence should be granted for exhibition of films. Because it is thinking of repealing of certain section, I cannot read this section as conferring such a power. The rules are repealed by an order or ordinance or any earlier rules may substituted by the new rules. If the rules have to be repealed, new rules are to be brought into picture, it cannot be said that no rules have been made. In my opinion, the direction vide Annexure-B, cannot be said to be covered within the four corners of the provisions of Section 14 of the Act.

16. Section 15 of the Act, also confers power on the State Government or licensing authority to suspend the exhibition of films in certain cases. The present endorsement dated 26-3-1991, cannot be covered by Section 15, because power of scope of Section 15 is to stop or to suspend or prohibit exhibitions of films in

any State or part thereof which in the opinion of the State Government or licensing authority, have got the tendency of causing breach by itself etc. How and when that order is to be passed, the procedure is prescribed in sub-section (2) of Section 15 which does not apply to the present case. The present order is also not covered by the revisional power of the State Government, reference has been made by the learned Government Advocate, as mentioned earlier, to provisions of Section 19 of the Act.

17. Section 19, confers power on the State Government to make rules for carrying out the purposes of the Act and sub-section (1) confers general power to make the rules. Sub-section (2) which contains clauses (a) and (d), as well as referred by the learned Government Advocate, it provides that without prejudice to the general power conferred under sub-section (1), in particular, the rules will make provisions and provide for matters referred to therein. Provisions may be made for the matters referred in clauses (a) to (c) onwards and when those rules are made, those rules have to be notified in the Government Gazette.

18. Section 19, in my opinion, does not cover the case of present Annexure-B, in other words, the direction that has been issued by the Government Order, issued by the Home Department cannot be said to be a rule, it is only a Government Order. Power under Section 19, is to frame rules and therefore, Section 19, in my opinion, is not applicable to the present case. No doubt, as contended by the learned Government Advocate Smt. Bharathi Nagesh, that the Government has got power to make repealment or to repeal any provisions of the Act or Rules, that power cannot be denied, but there had not been repeal of 1984 Rules. That until repealment of the provisions of the Act and the Rules, they do operate and notices have got to be issued or action taken or orders to be passed in accordance with the provisions of the Act and Rules.

19. As mentioned earlier, Section 14, itself which confers power on the Government to issue general directions or orders, that power has also been made subject to the provisions of the Act and the Rules, so, unless the rules are modified or Section of Act is modified, Government is also not entitled to travel beyond the four corners of the provisions conferring power to issue directions

under Section 14 of the Karnataka Cinema Regulations Act, 1965.

20. The Government Order which is dated 26-3-1991, in my opinion, is illegal and ultra vires being beyond the scope of the power of the Government and the Government could not have directed that fresh licenses be not issued or renewed to video parlour, pending matter of repealment of the rule, namely, Karnataka Exhibitions of Films on Television Screen through VCR (Regulations) Rules, 1984 or until further orders. The Government Order appears to be illegal and is held to be beyond the scope of the power of the State Government, so, is declared to be null, void and inoperative. The authorities have to act and to consider the applications for such licenses which are made after satisfying the requirements of the Act and the Rules which have been enacted with reference to exhibition of films on television screen. When the rules are repealed and in its place, new rules are framed, no doubt, new rules will be operative, may be prospectively or retrospectively, as their language may indicate. That pending consideration of matter, whether to repeal or not, the Rules of 1984, Government could not direct that no licenses could be issued or no licenses granted earlier be renewed.

21. In this view of the matter, in my opinion, the Government Order issued by the Deputy Commissioner/Secretary to the Government of Karnataka, Home Department, has to be quashed and declared to be illegal, void and inoperative.

22. That being the position, the Government Order dated 23-6-1991, or communication dated 26-3-1991, is being held to be illegal and inoperative. In my opinion, the respondent 2, acted illegally as well as illegally refused to exercise jurisdiction vested in him, when Deputy Commissioner, rejected the petitioner's application for grant of the licence to run the video parlour at H. No. 1-2-93/1-2-79, at Devadurga Town, in the District of Raichur. The order dated 29-5-1991, the Annexure-A, to this writ petition, as such, is illegal and bad in law as is held to be null and void.

23. Thus considered in my opinion, this writ petition deserves to be allowed and it is hereby allowed. The order at Annexure-A, issued by the Additional Deputy Commissioner and as well as the Government Order or the Government's communication dated 26-3-1991, issued under the signatures of Under Secretary

to the Government and issued from the Office of Commissioner-Secretary to the Government of Karnataka, Home Department, Bangalore, are hereby quashed and set aside by issuance of writmaking it inoperative. The direction in the nature of mandamus is hereby issued to the respondents to consider the petitioner's application for the grant of licence to run the video parlour as prayed for, in the light of the provisions of the Act and the Rules, as operative today.

24. If there is any deficiency, petitioner may be given opportunity to comply with that and if he does not comply with that, it will always be open to the Deputy Commissioner to reject or to consider his application and if the petitioner does comply with all the requirements, he should be granted the licence or its renewal. The costs are made easy.

25. Smt. Bharathi Nagesh, learned Government Advocate is directed to file the memo of appearance.

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