

**The State of Karnataka Vs. M. Shivappa**

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**Court :** Karnataka

**Decided On :** Jul-11-1975

**Reported in :** ILR1976KAR621; 1976(1)KarLJ241

**Judge :** D.M. Chandrashekar and ;B. Venkataswami, JJ.

**Acts :** Karnataka Cinemas (Regulations) Rules, 1971 - Rule 27(1)

**Appeal No. :** Writ Appeal No. 370 of 1974

**Appellant :** The State of Karnataka

**Respondent :** M. Shivappa

**Advocate for Def. :** R.U. Goulay, Adv.

**Advocate for Pet/Ap. :** M.P. Chandrakantbaraj Urs, H.C.G.A.

**Judgement :**

**Chandrashekhar, J.**

1. This is an appeal from the order of Jagannatha Shetty, J., in Writ Petition No. 3807 of 1973. The respondent herein was the petitioner therein He had applied for a licence to run a touring cinema in the site bearing Survey N, 292 in Kadugodi village. On inspection of that site, the District Magistrate, the licencing authority, found that the proposed cinema would be within a range of 162 feet from the

hospital in that village and that hence (lie condition prescribed in Rule 27 (1) (i) (iv) of the Karnataka Cinemas (Regulations) Rules, 1971, (hereinafter referred to as the Rules) that the distance between a cinema site and any public hospital or a private nursing home should not be less than 50 metres, would be violated. The District Magistrate declined to grant the licence.

2. The order of the District Magistrate refusing to grant the licence was impugned in the writ petition. It was contended before the learned single judge that the minimum distance of 50 metres prescribed in Rule 27 (1) (i) (iv), should be measured from the building of the hospital or the nursing home and not from the compound wall thereof, that in the present case the proposed cinema site was more than 50 metres from the building of the hospital and that hence there was no impediment to grant a licence. This contention found favour with the learned single judge who quashed the order of the District Magistrate and directed him to grant a licence to the petitioner.

3. In this appeal preferred by the District Magistrate, the correctness of the interpretation placed by the learned single judge on Rule 27 (1) (i) (iv), has been questioned.

4. When this appeal was admitted, the prayer on behalf of the appellant for stay of operation of the order of the learned single judge, was rejected and consequently the District Magistrate granted to the petitioner a licence in pursuance of which the latter was running the touring cinema. On his behalf, a memo has been produced in which it is stated that the period of lease of the site in which he was running the touring cinema, expired in June 1975, that the licence granted to him also expired along with the lease of the site and he has not been now running the touring cinema in that site.

5. Mr. R. U. Goulay, learned counsel for the respondent in this appeal, submitted that in view of the fact that the writ petitioner is not now running the touring cinema in the site in question, this appeal has become infructuous.

6. But, the learned Government Advocate submitted that the State is anxious to have a ruling of the Division Bench as to the interpretation of Rule 27 (1) (i) (iv)

since the impugned ruling of the learned Single judge will have to be followed by the licencing authorities while dealing with future applications for no objection certificates and licences unless that ruling is reversed by a Division Bench. We agree with the learned Government Advocate that it is necessary to decide this appeal on merits even though the writ petitioner may not have subsisting interest in the licence granted to him.

7. The Karnataka Cinema (Regulation) Act, 1964, (hereinafter referred to as the Act) provides for regulating exhibition by means of cinematographs and the licensing of places in which cinematograph films are exhibited in the State of Karnataka.

8. Sub-section (1) of Section 5 of the Act provides that any person who intends to give exhibition by means of a cinematograph in a place, shall make an application in writing, to the licensing authority for a licence therefor together with Such particulars as may be prescribed. Sub-section (2) of that Section provides that the licensing authority may, thereupon, after consulting such authority or officer as may be prescribed and subject to the provisions of this Act and the Rules made thereunder, grant the licence to such Person on such terms and conditions and subject to Such restrictions as it may determine.

9. In exercise of the powers under Section 19 of the Act, the State Government has framed the Karnataka Cinemas (Regulations) Rules, 1971, Chapter IV of the Rules deals with approval of location of permanent cinemas. Chapter X11 deals with touring cinemas. Rule 88 in Chapter XII provides that certain rules in other Chapters of the Rules shall apply mutatis mutandis to touring cinemas. One of those rules made applicable to touring cinemas is Rule 27. The material portions of Rule 27 read thus:

27. Conditions for the grant of No Objection Certificate.

(1) No objection Certificate shall be granted under this chapter in respect of any cinema unless;

(a) xx xx xx xx xx xx (i) the cinema site is at a distance of not less than fifty metres from,-

(i) . . . . .

(ii) any place of community worship, cremation ground, graveyard or cemetery in use, or

(iii) any recognised educational institution or any residential institution attached to such educational institutions, or

(iv) any public hospital or a private Nursing Home, or . . . . .

The learned single judge has taken the view that in relation to a public hospital or a private nursing home, the distance of 50 metres referred to in sub-clause (iv) of clause (i) of Rule 27 (1) should be measured from the building of the hospital.

10. The learned Government Advocate who appeared for the District Magistrate, contended that where there is a compound for the premises of a hospital or nursing home, the minimum distance of 50 metres prescribed in Rule 27 (1) (i) (iv) should be measured from such compound and not from the building only of such premises. On the other hand, Mr. Goulay argued in support of the view taken by the learned single judge.

11. Sub-clause (iv) of Rule 27 (1) (i) simply mentions of a public hospital or a private nursing home and does not mention of any building or land. Though the word 'premises' has not been used in that sub-clause, the expressions 'public hospital' and 'private nursing home' must be understood as having reference to the premises of such Public hospital or private nursing home. The several meanings of the word 'premises', according to the Shorter Oxford Dictionary are houses, building with grounds and appurtenances. According to the ordinary meaning of the word 'premises', not only a building but also the ground and appurtenances thereto are included. In the absence of anything to the contrary in Rule 27 (1) (i) (iv), the expressions 'Public hospital' and 'private nursing home' occurring therein should be construed as including not only the building of such hospital or nursing home but also the ground and appurtenances thereto. If such a construction is

adopted, it follows that the prescribed minimum distance of 50 metres between a cinema site and a public hospital or a private nursing home, should be measured from the boundary of the ground or appurtenances to the building of a public hospital or private nursing home and not merely from such building.

12. The learned single judge has observed that one hospital may have an extensive compound, that another hospital may have no compound or a very small compound and that there is no reason why the minimum distance for locating a cinema should be 50 metres from the boundary of the extensive compound of one hospital and a like distance from the boundary of another hospital which has no compound or a very small compound.

13. It is too narrow a view, in our opinion, to say that a public hospital or a private nursing home consists of only the building and not the ground and appurtenances thereto. Though most of the activities of a public hospital or a private nursing home may be carried on inside the building thereof, it is not unusual that the vacant ground appurtenant thereto should be used by the patients therein for moving about for exercise or fresh air and sunlight.

14. Sub-clauses (iii) and (v) of R. 27 (1) (i) relate to educational institutions, residential institutions attached thereto and recognised orphanages. In case of such institutions it is manifestly unreasonable to say that such institutions consist of only buildings and not the grounds and appurtenances thereto which are used for sport, drill, physical training, N. C. C., and like activities which form integral parts of the activities of such institutions. Can it be said that in the case of these institutions the minimum distance of 50 metres prescribed in Rule 27, should be measured from the buildings of such institutions and not from the boundary of the grounds and appurtenances to such buildings? The same reasoning is, in our opinion, equally applicable in construing the prescribed minimum distance of 50 metres in the case of public hospitals and private nursing homes.

15. However, Mr. Goulay brought to our notice that in clause (v) of Rule 11 of the Mysore Cinematograph Rules, 1946, which were in force in the old Mysore Area until they were superseded by the present Rules, it was expressly stated that the distance between a cinema theatre and a hospital should be measured between

the two compound walls. The material portions of that Rule read:

11. No license shall be granted under this Chapter in respect of any cinema theatre, unless,-

xx xx xx(v) such cinema theatre is situated outside the distance of 220 yards from any existing school or hospital or 110 yards from any existing dwelling house, the distance being measured between 'be two compound walls;

16. Mr. Goulay contended that the omission in Rule 27 (1) (i) (iv) of the express provision 'the distance being measured between the two compound walls' would indicate that the intention of the rule making authority is that the prescribed minimum distance should be measured from the building of a public hospital or a private nursing home and not from the boundary of the ground or appurtenances thereto.

17. On the other hand, the learned Government Advocate contended that the words 'the distance being measured between the two compound walls' occurring in Rule 11 (v) of the Mysore Cinematograph Rules, 1946, had created in ambiguity as to whether or not the distance between a cinema theatre and a school or hospital should be measured from the building of such school or hospital or from the boundary of the land appurtenant to such building where the premises of a school or hospital did not have compound wall and that the omission of the words 'the distance being measured between the two compound walls' in Rule 27 (1) (i) (iv) of the new Rules, was intended to remove such ambiguity.

18. The presumption arising from the use of different language in a later enactment, has been explained thus in Craies on Statute Law, Sixth Edition, at pages 141 and 142:

'..... if we find that the language employed by the legislature in the earlier statutes on a particular subject has been departed from in a subsequent statute relating to the same subject, it is generally, but not always, a fair presumption that the alteration in the language used in the subsequent statute was intentional. Where two statutes, said Bratt J. in *Dickenson v. Fletcher*, dealing with the same

subject-matter use different language, it is generally a fair presumption that the alteration in the language used in the subsequent statute was intentional. But in *Wray v. Ellis*, Lord Campbell C. J. said: 'There can be little use in referring to cases where a similar question has arisen on Acts differently framed, for they only illustrate the general principle, which is not in dispute.' When an Act, though mainly a consolidation Act, is not wholly so, but introduces fresh words, judicial decisions upon the construction of the Acts which are being consolidated are no longer authorities and cannot affect the interpretation of the new Act In *E. V. Jennings*, it being an indictable offence under Section 4 of the Offences against the Person Act of 1837 to 'stab, cut, or wound' any person, it was held that under this statute a person could not be convicted unless the wound was inflicted by some instrument. But Section 11 of the Offences against the Person Act, 1861. uses different language, and makes it indictable 'by any means whatsoever to wound or cause any grievous bodily harm to any person, 'and accordingly it was held in *R. v. Bullock*, that this alteration in the language of the statute was intentional, and was made for the purpose of meeting the case of a wound inflicted otherwise than by an instrument, as, for instance, with the hand .....

(underlining is ours)

19. We think there is considerable force in the contention of the learned Government Advocate that the omission of the words 'the distance being measured between the two compound walls' was for the purpose of avoiding ambiguity as to how the prescribed minimum distance should be measured where the vacant land or ground appurtenant to a building does not have compound wall. We are unable to accept the contention of Mr. Goulay that the omission of the aforesaid words in Rule 27 (1) (i) (iv) would indicate that the new Rules intended to make a departure from the previous Rules in regard to how the prescribed minimum distance between a cinema theatre and a school, a hospital or a nursing home, should be, measured.

20. Thus, we are unable to agree with the view taken by the learned single judge that the distance of 50 metres should be measured from the building of a public hospital or a private nursing home and not from the boundary of the vacant land

appurtenant to such building.

21. As the site in which the petitioner proposed to erect a touring cinema was within 50 metres from the boundary of the vacant land appurtenant to the building of that hospital, the District Magistrate was justified in refusing to grant a no objection certificate.

22. In the result, we allow this appeal, reverse the order of the learned single judge and dismiss the writ Petition.

23. In the circumstances of the case, there will be no order as to costs in this appeal.

24. Appeal allowed.

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