

Ramesh Vs. District Magistrate

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Court : Karnataka

Decided On : Jan-17-1995

Reported in : ILR1995KAR1019; 1995(2)KarLJ181

Judge : Hari Nath Tilhari, J.

Acts : Karnataka Cinema (Regulation) Rules, 1971 - Rule 85

Appeal No. : W.P. No. 1349 of 1995

Appellant : Ramesh

Respondent : District Magistrate

Advocate for Def. : H.H. Kaladgi, H.C.G.P.

Advocate for Pet/Ap. : K. Hanumantharayappa, Adv.

Judgement :

ORDER

Hari Nath Tilhari, J

1. My this Petition, the petitioner has prayed for grant and issuance of Writ of Mandamus directing Respondent to re-grant the licence in favour of the petitioner for the period commencing from 11.1.1995 onwards, to exhibit the films in Bhaskar Touring Talkies, K.G. Byadarahalli, J.C. Nagar, Bangalore, without insisting on the production of the Certificate of Clearance from the office of Commercial Tax

Officer/Department, regarding Entertainment Tax.

2. The brief facts of the case in the nut shell are:- According to the petitioner, the petitioner has been running the Touring Talkies in the name and style of 'Bhaskar Touring Talkies', with effect from 1976 and maintained the same in good condition and in accordance with the provisions of Karnataka Cinema (Regulation) Act, 1964 and the Rules framed thereunder, known as Karnataka Cinema (Regulation) Rules, 1971. The petitioner's case is that petitioner's licence has been renewed from time to time and lastly it was renewed on 15.7.94, for the period up to 30.9.94. The petitioner's further case is before the expiry of the period, the petitioner made an application for renewal or re-grant of licence for another year vide., Annexure-B. The petitioner has further stated that respondent after having received the petitioner's application for grant (re-grant) of the licence has not considered the same, simply on the ground that the petitioner has not produced the Entertainment Tax Clearance Certificate from the office of the Entertainment Tax Officer. The petitioner's case is that for the period from 1.10.94 till the date of moving the Petition, the petitioner had to close the screening from public view in order to carry out necessary improvements and repairs in the Touring Talkies. The petitioner has asserted in the Petition that inspite of request being made by the petitioner to the respondent to renew/re-grant the licence to the petitioner for running the Touring Talkies, Respondent had not paid any heed and insisted upon him to produce the Entertainment Tax Clearance Certificate from the office of the Entertainment Tax Officer. The petitioner is no doubt agreeable to pay tax due, which is hardly Rs. 7,000/- in instalments and may be making application before the Special Court for the recovery, for that purpose and the insistence on the part of the respondent that petitioner should first produce the Entertainment Tax Clearance Certificate from the office of the Entertainment Tax Officer before the question of the grant i.e., re-grant of the licence is considered, is illegal. The petitioner's case is that up till now no order has been passed on the petitioner's application for re-grant of the licence which had been moved. The learned Counsel for the petitioner submitted before me that the application for grant or regrant of licence has been made and the opposite party is illegally refusing to consider the petitioner's case for re-grant of licence simply on the ground of petitioner's failure to produce the Entertainment Tax Clearance Certificate from Entertainment Tax

Officer. The learned Counsel for the petitioner submitted that Rule 85 (iii) of the Karnataka Cinema (Regulation) Rules, 1971 has already been held ultra vires and once it has been held ultra vires, it is not operative and once there is no such requirement under the law, the respondent illegally refuses to exercise the jurisdiction and power in the matter of grant or re-grant of the licence, by not considering the petitioner's application therefor and by keeping it pending. Learned Counsel for the petitioner made a reference to the Division Bench Decision of this Court in Writ Petition No. 19904/1985 DD 30.6.1992 - Srinivasa Prasanna Chitra Mandira v. The State of Karnataka and Anr., in support of his contention that Rule-85(iii) of the Rules is ultra vires of the provisions of the Act.

3. The learned Government Advocate firstly submitted that he does not admit that the application for re-grant has been made. Annexure-2 to the Writ Petition shows that such an application has been moved on 19.12.94. Learned Government Counsel submitted that according to Rule 85(1), application should have been made atleast one month before the expiry of the period of the earlier licence and in this case the application has been moved on 19.12.94 and not one month before the date of expiry of the earlier licence. The licence according to the learned Government Counsel expired on 30th September, 1994. Learned Government Advocate further contended that the petitioner has not produced any documentary proof to the effect that respondent No,1 has insisted on the production of Entertainment Tax Clearance Certificate and as such if the authorities would have rejected his application as being one not in accordance with law, there would have been no error of law or of jurisdiction. Learned Government Advocate no doubt fairly submitted that the allegations made in the Writ Petition to the effect that the authorities insisted on production of Clearance Certificate, as alleged in the Writ Petition if it is correct though he does not admit that allegation to be correct, then in that case they were mistaken, as Sub-rule (iii) of Rule 85 of the Rules of 1971 has been declared illegal and ultra vires.

Finally learned Government Advocate submitted that infact the Writ Petition should be dismissed as premature as being without cause of action.

4. I have applied my mind to the contentions of the learned Counsel for the petitioner and the learned Government Advocate.
5. Before proceeding further I may observe that if application for grant (re-grant) of licence had been made on 19.12.94 and if in the opinion of the authority it has not been moved in accordance with law, it was open to him to reject the same keeping in view the provisions of law and the ground on which it could be rejected, but they had to pass certain orders. As regards the contention of the learned Government Advocate that the application for re-grant had been moved not one month before the expiry of the period of the earlier licence, which licence has expired on 30.9.94, the application should have been rejected on the ground of delay. I find no substance in this contention. In my opinion Rule 85(iii) of the Rules, is part and parcel of the scheme of grant of licence under Sections 5 to 10 of the Act. The provisions of Sections 5, 6 and 8 provide for grant of licence or refusal to grant the licence. Section 8 of the Act provides that licensing authority shall not grant licence unless it is satisfied that Rules made under the Act have been substantially complied with and adequate precautions have been taken in regrant to the place in respect of which licence is to be granted to provide for the safety, convenience and comfort of the persons attending exhibitions therein and the limit regarding the number of places for the area, as determined under Section 7, is not exceeded. Section 6 of the Act also provides that licensing authority in deciding whether to grant or refuse a licence, have regard to the interest of the public generally, to the suitability of the place where the cinematograph exhibitions are proposed to be given, the adequacy of existing places for the exhibition of cinematograph films in the locality and the benefit to any particular locality or localities to be afforded by the opening of a new place of cinematograph exhibition and shall also take into consideration any representations made by persons already giving cinematograph exhibition in or near the proposed locality or by any local authority or police authority within whose jurisdiction the place proposed to be licensed is situated or by any association interested in the giving of cinematograph exhibition.
6. Rule 85 of the Rules, when it provides that application for re-grant shall be made one month earlier or one month prior to the date of expiry of the earlier licence, the intention of the framers of the Rule is that the Licensing Authorities

must atleast get one month's time to consider and dispose of application for re-grant and the person having licence also may not suffer during this period on the ground that licence has expired. This is a Rule of Caution, which provides that application should be made one month earlier or before the expiry of the period of earlier licence. As the law provides that no one shall be given an exhibition by means of a cinematograph elsewhere than in a place licensed under this Act, or otherwise than in compliance with any conditions and restrictions imposed by such licence and if any one wants to exhibit or give exhibition by means of cinematograph, he shall first apply for grant of licence and he can do so only after having got the licence.

7. The application for re-grant is an application for grant. It cannot be rejected on the ground that it has not been made one month earlier to the expiry of the period of earlier licence, because there is no such provision expressly made. Rule 85 of the Rules provides that application shall be accompanied by the certificates referred to in Clauses (a), (b), (bb) and (bbb) as well by declaration referred to in Clause (c) of Rule 35 and it also to be accompanied by a treasury challan for evidencing the payment of the fee at the rates specified in Rule 87 i.e., treasury challan evidencing the payment of requisite fee.

8. Thus the application for re-grant is almost same thing as application for grant with even no exception to the in the matter of fee. In the case of application under Rule 35, the treasury challan has to evidence the payment of licence fee prescribed under Rule-38 while treasury challan required under Rule 85(ii) of the Rules will be evidencing the payment of fee as referred to in Rule 87 of the Rules. But a reading of Rule 87 of the Rules per se will show that it provides for re-grant of every licence, the same rate of fee as laid down in Rule 38 shall be charged. So a reading of Rule 87 also indicates that there is no difference in between the application for grant and re-grant of I licence. The application for grant of licence can also be made and no time limit is prescribed. Really the re-grant is part and parcel of the matter of grant of licence and there being no specific provision for rejection on that ground, in my opinion even if the petitioner's application has been made after the expiry of the period of earlier licence, there could be no ground for its rejection on the ground that it was not made within one month prior to or before

the period of expiry of the earlier licence, definitely it could be treated as an application for re-grant and it can be disposed off.

9. As regards Rule 85(iii), which had been introduced in 1985, no doubt provides that in addition to what has been mentioned in Sub-clause (i) and (ii) of Rule 85, the Entertainment Tax Clearance Certificate issued by the competent authority had to be accompanied with the application. Learned Government Advocate failed to explain under what clause of Section 19, this Rule could be said to be covered. As such firstly it appears to me that this Rule had been made without any authority.

10. The Division Bench consisting of Hon'ble Mr. Justice Shivashankar Bhat and Hon'ble Mr. Justice R. Ramakrishna of this Court in the case of PRASANNA CHITRA MANDIRA v. THE STATE OF KARNATAKA W.P.No. 19904/85 DD. 30.6.1992, has been pleased to observe and laydown as under :-

'A reading of the provisions of the Act in its entirety show that the purpose of the Act is to see a proper place is chosen for the exhibition which should be licensed and proper provisions are made to safeguard the interest of the persons who resort to the theatre and their safety is not jeopardised by any malconstruction. Further, the Act requires the licensee to provide proper facilities to the persons who resort to the theatre. The Government also has the power to direct the exhibition of slides which would contribute to the public interest as stated in Section 13. But nowhere the Act provides the levy and collection of taxes as such, on the act of exhibition. In other words, levy and collection of Entertainment Tax is not one of the purposes of the Act. Similarly nowhere the Act contemplates that the licence holder should not be a tax defaulter for the grant or re-grant of the licence.'

In paragraph-4, the Division Bench further observed, as under:-

'The levy and collection of the entertainment tax is under the provisions of the Karnataka Entertainment Tax Act, 1958. It is not brought to our notice by the respondents that the said Entertainment Tax Act provides that a licensee should not be a defaulter before seeking the regrant of the licence. Actually we are not

concerned with that aspect of the matter. We are concerned with the exercise of the power by the State Government under Section 19 of the Act. If the levy and collection of the Entertainment Tax is not one of the purposes sought to be achieved by the Act, then certainly the State Government cannot make a rule governing that aspect of the matter under Section 19 of the Act.'

11. In this view of the matter, I am of the opinion that the Division Bench of this Court has held Rule 85(iii) of the Rules of 1971 to be ultra vires being beyond the scope of rule making power and has struck it down to the extent it has provided for production of Clearance Certificate from Entertainment Tax Officer. This being the position, in my opinion the petitioner under law is not required at all to produce Entertainment Tax Clearance Certificate from Entertainment Tax Officer, nor it is open to the opposite party to press the petitioner for its production nor impress upon the petitioner that application for grant of licence or re-grant of licence, cannot be considered unless he produces the Entertainment Tax Clearance Certificate.

12. The learned Government Advocate has contended that there is no documentary proof that authorities have pressed for production of Entertainment Tax Clearance Certificate. The petitioner has made assertions to that effect on an affidavit.

13. The allegations made in the Petition supported by affidavit is taken on its face value and it is expected that now the authorities will not press upon the petitioner that he should produce the Clearance Certificate of Entertainment Tax. The learned Government Advocate really in order to avoid the delay in the disposal of the matter has submitted that for the purpose of this case it may be taken the allegations are true but he is not admitting the allegations.

14. Thus considering as above, in my opinion, the Writ Petition deserves to be allowed. The Writ Petition is hereby allowed. Let a Writ of direction in the nature of Writ of Mandamus be issued to the respondent in the Writ Petition to consider and to dispose off the petitioner's application for grant (re-grant) of the licence, at the earliest within a period of one month from the date of production of the copy of this Order or atleast operative part of the Order by the petitioner.

15. It is further directed that in view of the law laid down by the Division Bench as well as by this Court and in view of the observations made earlier, the respondent will not refuse to grant the licence, on the ground that Entertainment Tax Clearance Certificate has not been produced. The application shall be considered and disposed off on merits without compelling the petitioner from producing such a Certificate under Rule 85 (iii) of the Rules.

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