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Court : Andhra Pradesh

Decided On : Apr-01-1960

Reported in : AIR1961AP126

Judge : Seshachalapati, J.

Acts : Constitution of India - Article 19(1), 19(6) and 19(61); Hyderabad Cinematograph Rules, 1953; Hyderabad Cinematograph Act, 1952; Hyderabad Cinemas (Regulation) Act, 1952

Appeal No. : Writ Petn. No. 487 of 1958

Appellant : M.A. Baig

Respondent : State of Andhra Pradesh Represented by Secretary, Home Department and anr.

Advocate for Def. : O. Audinarayana Reddy, Govt. Pleader

Advocate for Pet/Ap. : Party in person

Disposition : Petition dismissed

Judgement :
ORDER

Seshachalapati, J.

1. This is a petition for the issue of a Writ of Certiorari and to quash the order of the Commissioner of Police of Hyderabad dated 4-2-1958 on the ground that conditions 3(a) and (b) of the licence granted to the petitioner are void and unconstitutional.

2. The petitioner is the proprietor of a Cinema house called 'Noble Talkies' at Mallepalli in the City of Hyderabad. He applied for a licence under the Hyderabad Cinematograph Act, 1952 and the Hyderabad Cinematograph Rules, 1953. Under the said licence the petitioner has to produce Fire, Electrical, Municipal and Approved Films Certificates. On 14-2-1958, the Police Commissioner of Hyderabad notified to the petitioner that he had not produced the Municipal Certificate and the Approved Films Certificate and, therefore, action would be taken against him under Section 7 of the Hyderabad Cinema (Regulation) Act, 1952 and he would be liable for the penalties described in that provision.

The petitioner's case is that he had produced all certificates except the Approved Films Certificate. In this petition the petitioner's contention is that the conditions in the licence providing for the production of Approved Films Certificate are unconstitutional as prejudicing his rights guaranteed under Article 19(1)(g) of the Constitution. It is the validity of the condition in respect of the production of the Approved Films Certificate that falls to be considered in this writ petition.

3. Under the Hyderabad Cinematograph Rules, 1953, certain conditions for the licence are prescribed. Conditions 3(a) and (b) are in these terms : '3(a) ; The licensee shall exhibit at each performance one or more approved films of length not exceeding 2000 feet in the case of approved films of 35 mm. size and the corresponding footage in the case of approved films of 16 mm. size.

EXPLANATION 1: Only such films produced in India as are certified by the Central Government with the previous approval of the Films Advisory Board, Bombay, to be scientific films, films intend-ed for educational purposes, films dealing with news and current events or documentary films shall be deemed to be approved films for the purposes of this condition.

EXPLANATION 2 : For the purpose of computing the corresponding footage of films of 16 mm. size in relation to films of 35 mm. size, 400 feet of films of 16 mm. size shall be deemed to be equivalent to 100 feet of films of 35 mm. size.

(b) The licensee shall comply with such directions as the Government may, by general or special order, give as to the manner in which the approved films shall be exhibited.'

Some suggestion has been made in the affidavit of the petitioner that these rules had not been implemented. It is averred in the counter affidavit filed by the Government that the conditions laid down as per the rules framed under the Hyderabad Cinema (Regulation) Act, 1952, were published in the Gazette Extraordinary on 31st December 1952, There is, therefore, no substance whatever In this suggestion.

4. Equally untenable, to my mind, is the suggestion that the action of the Commissioner of Police is designed to bring pressure upon the petitioner to pay the sum of Rs. 838-71 nP. due to the Films Division of the Government of India, The petitioner became liable to the Government in that sum, because the petitioner had contracted with the Govt. of India to exhibit those films. If in respect of that contract he had not paid the amount, the Government of India would be entitled to call upon him to do so. I am unable to see how the present action by the Commissioner of Police has any reference to the dues which the petitioner owed to the Films Division of the Government of India. That is not a point that arises for determination in this petition.

5. The only question which has been raised by the petitioner who appeared in person, is that conditions 3(a) and (b) of the licence constitute wholly, unwarranted and unreasonable infringement of his right to pursue the practise of a protession or a business in his own way. The petitioner contends that his cinema house is not a large one, that it does not attract large number of persons and actually his earnings are not more than Rs. 50/- per day and that after paying the taxes and meeting other charges, he is left with a little surplus.

It is argued that the type of films which he has to exhibit by reason of the conditions 3(a) and (b) of the licence are films in which the people that visit his cinema do not take any interest and to force him to devote a large portion of the footage of the films he is exhibiting to the approved films would be an unwarranted and uncalled for interference with his liberty and freedom to pursue his business in his own way. He placed strong reliance on the decision of the Supreme Court in R.M. Seshadri v. The District Magistrate, Tanjore, : [1955]1SCR686 . In that case their Lordships had to construe the scope of the provisions in the licence granted to a cinema theatre, analogous to conditions 3(a) and (b). Those conditions were in these terms :

'4(a): The licensee shall exhibit at each performance one or more approved films of such length and for such length of time, as the Provincial or the Central Government may, by general or special order, direct.

(b) The licensee shall comply with such directions as the Provincial Government may by generator special order give as to the manner in which approved films shall be exhibited in the course of any performance.

Explanation :-- 'Approved films' means a cinematograph film approved for the purpose of this condition by the Provincial Government or the Central Government.

Special Condition 3: The licencee should exhibit at the commencement of each permormance not less than 2,000 feet of one or more approved films.' With regard to these conditions, Ghulam Hasan, J. speaking for the court, held that as condition 4(a) stands, there is no principle to guide the licensing: authority and that such a condition may lead to the less or total extinction of the business itself. With reference to Special Condition 3, the learned Judge held.

'This condition lays down the minimum length of the film to be shown as 2,000 feet and gives no indication of the maximum. We are informed that the showing of a film of 2,000 feet will take about 20 minutes. This will work out to about 1/7th of the total time of each performance if it is taken to last for 2 1/2 hours. Whether a maximum of 2,000 feet would he reasonable is a matter we need not consider but

as this is mentioned as the minimum it Is obvious that the Government may compel the licensee to exhibit a film of 10,000 or 12,000 feet which in effect will amount to pushing out of the film intended to be shown by the licensee during the time allotted.'

These observations Cannot apply to this case, for in Condition 3(a) it is specifically mentioned that the licensee shall exhibit approved films not exceeding 2,000 feet. This is not a case like the one that their Lordships of the Supreme Court had to consider, where only the minimum has been prescribed but is a case where the maximum has been prescribed.

6. The next question, therefore, is whether the insistence that the approved films should be exhibited is an, unreasonable restriction. Under Article 19(1)(g) of the Constitution all citizens have the right to practice any profession or to carry on any occupation, trade, or business. Article 19(6) is in these terms :

Nothing in Sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular nothing in the said sub-clause shall affect the opertion of any existing law in so far as it relates to, or prevent the State from making any law relating to,

i. the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

ii. the carrying on by the State or by a Corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, o citizens of other-wise."

It now falls to be determined whether the requirement that the licensees of cinema houses should exhibit the approved films is a restriction in the interests of the general public. In the counter affidavit, it is stated that these approved films deal with matters of cultural, scientific and hygienic importance and also with news and current events relating particularly to various parts of the country and the

development projects and cultural activities all over India.

It is also stated, that there are several illiterate and uneducated people in our country and it is in public interest that a certain amount of education and instruction should be combined with entertainment and imparted by audio visual methods. It is too late in the day to entertain any doubts about the value of the cinema as a medium of not only entertainment but education. I have no reason to reject the statement contained in the counter affidavit that these approved films are intended to show on the screen the great progress that the world is making in science and technology and of the various projects of development in social, industrial and commercial life in this country.

To hear and see on the screen how other people live in the wide world and how in different parts of India progress is being achieved will certainly be of considerable educational value and, therefore, in public interest. The concept of a Welfare State like ours has been steadily widening in scope. Our State (like all other Welfare States) is not content merely to keep law and order, protect people's lives and properties. It is seeking to meet the challenge of a fast changing social order.

It is seeking the adjustment in social and economic conditions of the people and to rectify the imbalance between those that have and those that have not. It is seeking, consistently with a democratic way of life to give every citizen a chance to improve his material condition. Added to this it seeks to promote the more, intellectual and cultural life of the people. It is, therefore, spreading its activities in directions which might have shocked the political conscience of John Stuart Mill and Herbert Spencer.

If the State as an institution has come into existence to make the life of the civil society possible, it exists to make it better. In the documentaries and the approved films those that have neither opportunities to read nor resources to travel are given the chance of seeing the images of life and progress of the world. The purpose therefore of such films is certainly conceived in public interest. If it is a purpose so conceived, it certainly is a reasonable restriction within the meaning of Article 19(1)(g) of the Constitution.

7. I see, therefore, no merit in the contention of the petitioner that these two conditions are violative of the guarantee enshrined in Article 19(1)(g) of the Constitution.

8. Mr. Baig has also contended that the notice that has been given, to him is an attempt to make him buy these films only from the Films Division of Govt. of India, which has a branch at Vijayavada. In the counter affidavit filed by the Government, the allegation in that form is denied. It is stated that the cinema exhibitor could secure the approved films from whatever source he liked. The insistence is only on the exhibition of the approved films.

9. I see, therefore, no merits in this petition. It is dismissed with costs. Advocate's fee Rs. 100/-.

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