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Court : Madhya Pradesh

Decided On : Oct-19-1987

Reported in : AIR1988MP266

Judge : B.C. Varma and ;Rampal Singh, JJ.

Acts : Madhya Pradesh Cinema (Regulations) Act, 1952 - Sections 3, 5, 5(2), 6 and 8; Madhya Pradesh Cinema (Regulations) Rules, 1972 - Rules 100, 102, 103 and 120

Appeal No. : Misc. Petn. No. 2698 of 1985

Appellant : Roopsingh and anr.

Respondent : Licencing Authority/Dist. Magistrate and ors.

Advocate for Def. : Rajendra Tiwari, Deputy Adv. General

Disposition : Petition dismissed

Judgement :

Rampal Singh, J.

1. By this petition under Article 226 of the Constitution of India the petitioners pray for issuance of appropriate writ directing respondents 1 and 3 to renew the cinema licence in their favour for operating Mahabir Talkies, Tikamgarh.

2. The present petitioners, on 28-2-1984, applied to the District Magistrate, Tikamgarh for renewal of the cinema licence of Mahabir Talkies for the year 1984-85. The respondent 2 also filed an application on 6-1-1984 before the same authority contending that he has a share in the said talkies and, therefore, the licence in the name of the petitioners be not renewed. The respondent 2 further contended that he is also owner of Mahabir Talkies. In the light of these rival contentions, the District Magistrate, after hearing both the parties, passed an order on 23-8-1984 holding that there was sufficient proof that respondent 2 has half share in Mahabir Talkies. The District Magistrate further held that petitioner 1 should get his right and ownership of Mahabir Talkies declared within a month from the date of the order and then after a month the question of renewal shall be considered. Aggrieved by this order of the District Magistrate, Tikamgarh, the petitioners preferred an appeal before the State Government. The State Government dismissed the appeal on 18-6-1985. In this petition, Annexure R-1 is the order passed by the District Magistrate and Annexure R-II is the order passed by the appellate authority, i. e. the State Government, and these two are under challenge.

3. According to the petitioners, they are the sole owners of Mahabir Talkies because it was purchased by them by a registered sale-deed dt 29-1-1981 from one Phindilal. On 10-6-1961 a partnership was created with regard to this cinema business between petitioner 1 and one Pooran Singh and the licence was issued in the name of petitioner 1 continuously till the year 1973. In June 1973, this partnership came to an end. The licence of Mahabir Talkies was renewed continuously in the name of petitioner 1. Subsequently the petitioner 2 entered into the partnership of the cinema business with respondent 1, the licence was renewed then continuously till the year 1983. The respondent 2 Jasbir Singh who claims himself to have succeeded to the deceased partner of this cinema business after his death created a dispute with regard to the ownership of the cinema business. This dispute was heard by the District Magistrate, Tikamgarh and he passed an order Annexure R-1 under the Madhya Pradesh Cinema (Regulation) Act and Rules of 1972. In Annexure R-1 the District Magistrate did not reject the renewal application of petitioner 1 but kept it pending for a month. In appeal, vide Annexure R-II, the State Government was of the view that there was prima facie a

dispute between the parties with regard to the ownership of the cinema premises and the District Magistrate was correct in not renewing the same, because such dispute can only be adjudicated in a civil suit and not in the proceedings of renewal. The petitioners claim that both the orders impugned are illegal and bad in law. They further contended that the State Government failed to consider the impact and effect of Rule 102 of the M.P. Cinema (Regulation) Rules, 1972. The petitioners also contended that the direction to settle the dispute in the forum of Civil Court was wholly unwarranted.

4. Respondents 1 and 3, in their return, justified both the orders under challenge. Respondent No. 2 has neither appeared nor filed any return. Respondents 1 and 3 contended that the orders passed by the District Magistrate and the State Government are not only proper and just, in the facts and circumstances of the case, but are also legal and in accordance with the provisions of the Rules. They further contended that the dispute with regard to the cinema property between the petitioners and the Nagar Nigam also pending in different Courts since the death of Pooran Singh. It would, therefore, be just and proper for the petitioners to get their rights settled in a civil court. Questions of title, possession and mesne profits regarding the disputed property could not be determined by the licensing authority. The answering respondents also contended that there were incidence of violence between the parties also with regard to the cinema property and there are criminal proceedings between the rival contenders. It is due to these reasons that if the licence is renewed there are stronggrounds of apprehension that public order and public peace may be disturbed.

5. The petitioners contend that the licensing authority as well. as the State Government failed to consider the impact and effect of Rule 120 of the M.P. Cinema (Regulations) Rules, 1972. Rule 120 is being reproduced for convenience :

'120 -- Licences not transferable :-- A licence granted under these rules shall not be transferable but shall be personal for the benefit only of the persons to whom it is granted and on the death of the licensee, shall be deemed to be revoked.'

From this provision the petitioners want to emphasise that even after the death of Pooran Singh the licence remained to be renewed continuously by the licensing authority in the name of petitioner 1 while respondent 2 never, during this period, came forward to claim the renewal for the addition of his name in the licence. But reliance of Rule 120 is baseless and unfounded. This Rule simply provides that the licence shall not be transferable but shall be personal for the benefit only of the persons to whom it is granted and on the death of the licensee it shall be deemed to have been revoked. Conclusively, this Rule is of no help to the case of the petitioners.

6. Section 3 of the M.P. Cinema (Regulations) Act of 1972 (hereinafter called the 'Act') provides that cinematograph exhibition is to be licensed. It thus seems reasonably clear that the provisions of the Act are designed to regulate the exhibition of cinema and the purpose is largely recreative or educational. That being so the provisions of Section 3 of the Act provides that no person shall give an exhibition by means of cinematograph at any place other than a place licensed under this Act seems to be absolute and imperative. Section 5 of the Act places restrictions on the powers of the licensing authority and provides that licensing authority may grant licence to such persons as that authority thinks fit and on such terms and conditions and subject to such restrictions as it may determine. Undoubtedly it is the discretion of the licensing authority whether to grant or not to grant a licence to a person, will depend upon the facts and circumstance of each case. The provision also provides an appeal to the State Government by which it may judge whether the discretion exercised by the licensing authority is arbitrary, illegal or just and proper. Thus the State Government keeps a vigilant eye upon the licensing authority. This reasonable control over the authority guarantees proper exercise of discretion by the licensing authority. Section 6 of the Act provides that the District Magistrate may suspend the exhibition of a film if it is likely to cause a breach of peace. Thus the licensing authority is also required to keep an eye on the law and order situation of the locality. Section 8 of the Act provides also for revocation of this licence on certain grounds.

7. Renewal of the licence is provided in Rule 105 which provides that the licensing authority may renew the licence subject to Rule 103 and application for renewal

shall be submitted under Rule 100. The scheme of the Act and the Rules, thus appears to be that the licensing authority and the State Government shall exercise not only control but shall also regulate the cinema exhibition. The word 'control' is not only confined to mere regulation. It is more comprehensive and includes domination or command over the subject-matter. Undoubtedly the State Government can lay down general rules or guidelines for guidance of the licensing authority for sound exercise of discretion. The word 'control' mentioned in Section 5(2) of the Act indicates that the State Government shall exercise restraint or direction (sic) upon the free action of discretion of the licensing authority.

8. The contention of the petitioner that the licensing authority remained renewing the licence from 1973 to 1984 has also no force. This fact does not create a right in favour of the petitioners. When the dispute was raised before the licensing authority, when the authority perceived danger to maintenance of law and order in case the licence was renewed, then the respondent No. 1 was correct in directing the petitioners to get their right and ownership of the cinema premises determined by the Civil Court. The part of the order of the authority that the renewal application shall be kept pending for a month was set aside by the Government in appeal. This Court in *Murlidhar Shankerlaljiv. State of M.P.*, 1985 MPLJ 246 has held that cinema licence is a personal right of the licence holder and on his death legal representatives cannot be substituted. The remedy available to them is to apply for a fresh licence. Thus, the petitioners can get their right of ownership determined in a civil Court against respondent 2 and if they are declared to be the rightful owners, then can apply to the licensing authority for cinema licence afresh.

9. There appears no contravention of any provision of the Act and rules in the impugned orders passed by the licensing authority and the State Government in appeal. Both the orders are held to be just and proper. There is no arbitrariness in exercise of the discretion on the part of respondent Nos. 1 and 3 in passing the impugned orders. Consequently, this petition has no force and is dismissed. There shall be no order as to costs. Security amount, if any, be returned to the petitioners.