

Shmt. Chander
Wati alias Battu
v.

Hari Chand
and others

Falshaw, J.

There seems to be no doubt that in the present case the plaintiff has first to establish her right to receive maintenance from the defendants before she can claim the sum claimed by her as arrears.

The learned counsel for the petitioner relied on the decision of Wazir Hassan, J., in *Mt. Bhairon Dei v. Ram Sewak Lal* (1), in which it was held that when the plaintiff's case as laid in the plaint leads to no other relief than the arrears of maintenance, the Court fee payable would be according to the amount claimed, but since the facts in that case, although it was only for a small sum as arrears of maintenance, involved the plaintiff's establishing her right to receive maintenance, I am not sure that the decision was correct in the light of what I have observed above. In the circumstances I am of the opinion that the view taken by the Lower Court was correct and I accordingly dismiss the revision petition. The parties will bear their own costs and have been directed to appear in the Lower Court on the 31st of March, 1960.

B.R.T.

CIVIL MISCELLANEOUS

Before D. K. Mahajan, J.

THE NOVELTY TALKIES, BHATINDA,—*Petitioner.*

versus

THE PUNJAB STATE AND ANQTHET,—*Respondent.*

Civil Writ No. 72 of 1960.

1960
March, 27th

Punjab Cinemas (Regulation) Act (XI of 1952)—Sections 4, 5, 6 and 8 and Rules 3, 4, 5, 7, 8, 9 and 10—Power to

(1) A.I.R. 1927 Oudh. 623

grant or renew a license—Whether vests in the District Magistrate or the Government—Requirements of the Act and the Rules satisfied—Licensing authority, whether can refuse the licence—Exemption from the Rules—Whether can be claimed as of right—Refusal to grant or renew licence based on extraneous considerations—Whether mala fide—Opportunity before refusal of licence—Whether necessary to be afforded.

Held, that the provisions of section 4 of the Punjab Cinemas (Regulation) Act, 1952, make it clear that the District Magistrate is the licensing authority and not the Government. Although the Government has the power to constitute a licensing authority other than the District Magistrate, it has not been done in the Punjab. Sub-section (2) of section 5 of the Act makes the licensing authority subject to the control of the Government but the nature of this control is that it has to be exercised in accordance with the provisions of the Act after the District Magistrate has exercised his discretion. If this provision is intended to refuse a licence, where the provisions of the Act and the Rules made thereunder are satisfied, it will offend against Article 19 of the Constitution nor can the Government refuse to grant a licence under this power until the District Magistrate has exercised his discretion. In the present case as the refusal has not been by the District Magistrate, the order of the Government refusing the licence is beyond its powers and is not justified.

Held, that an exhibitor is entitled to exhibit the films if he satisfies the requirements of the Act and the Rules made thereunder. If these requirements are satisfied, the licensing authority has no power to refuse the licence but must issue the same.

Held, that exemption from the Rules cannot be claimed as of right. The grant of exemption is a matter purely within the discretion of the licensing authority which discretion is subject to the control of the Government.

Held, that the refusal to grant or renew the licence based on extraneous considerations is *mala fide*.

Held, that the Government has no power under the Act to grant or refuse to grant a licence. The only power that the Government has is to cancel a licence under section 8 of the Act or to control the grant or refusal of a licence as provided in section 5(2). As the Government has no power to grant a licence, the question of giving opportunity in case of refusal to grant a licence does not arise.

Petition under Article 226 of the Constitution of India praying that a writ of certiorari or any other suitable writ or direction be issued quashing the order, dated 31st December, 1959, passed by respondent No. 1 whereby the renewal of licence of the petitioner was withheld and further praying that respondent No. 2 be directed to renew the licence of the petitioner.

H. L. SIBAL, and PURAN CHAND, for the Petitioner.

M. R. SHARMA, for Advocate-General, for the Respondents.

ORDER

Mahajan, J. MAHAJAN, J. (Feb. 17, 1960).—This is a writ petition against the order of the District Magistrate, dated the 31st December, 1959/1st January, 1960, informing the Manager of the Novelty Talkies, Bhatinda, that the licence will not be renewed after 31st December, 1959.

The facts giving rise to this petition are that the Novelty Talkies is an incomplete cinema building erected on land belonging to the erstwhile Pepsu State. The land was leased by the Pepsu State from time to time to this Cinema from the year 1937 to the year 1949. In the year 1949 the Municipal Committee, Bhatinda, was formed and it seems that this land was vested by the Government in the Municipal Committee, Bhatinda. On the 6th of August, 1949, Municipal Committee, Bhatinda, gave the lease of this land to the Cinema for a period of ten years. However, the Government intervened and curtailed the period of lease to five years, but on representation made to the Commissioner the lease was allowed to continue for the full term of ten years. On the 1st December, 1954, the District Magistrate passed an order that the licence of the Cinema would not be renewed from 31st December, 1954. An appeal against this order was rejected by the Chief Secretary of the Pepsu State. This led to a writ petition under Article 226 of the Constitution to the Pepsu High Court and on the 10th

March, 1955, the Pepsu High Court allowed the petition with the result that the licence was renewed up to the year 1958.

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In the meanwhile, it seems that negotiations were going on between the owners of the Cinema and the Government for the transfer of the land and in the year 1959, the petitioner was informed by the Government that Government was willing to sell the land to the petitioner at the rate of Rs. 25 per square yard. The petitioner intimated his willingness to purchase the land on 7th December, 1959. On 23rd December, 1959, Government intimated to the petitioner that he should pay 50 per cent price forthwith and the balance in two six-monthly instalments and that the question of the renewal of the licence will be examined on receipt of the reply from the petitioner to their letter in question which is annexure 'C' on the record. The petitioner, however, on 28th December, 1959, in his reply prayed that the price be charged in four yearly equal instalments and in the meantime as already stated the notice, dated 31st December, 1959/1st January, 1960, was served on the petitioner whereby it was intimated that the licence will not be renewed after the 31st December, 1959.

The present petition has been filed in this Court challenging the jurisdiction of the Government to refuse to renew the licence. The contentions of the learned counsel for the petitioner are (1) that it is only the District Magistrate who is under the Act empowered to renew the licence or refuse to renew the licence and that the Home Department has no jurisdiction in the matter; (2) that the renewal has been stopped for a collateral purpose, the purpose being to force the petitioner to purchase the land, (3) that no opportunity

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was afforded to the petitioner to represent against the decision of the Government not to renew the licence before finally refusing to renew the licence.

[The rest of the order is not necessary as it relates to permission to amend the petition. Editor].

(March 3rd, 1960)—This order should be read in continuation of my order, dated the 17th of February, 1960, wherein the facts giving rise to this petition have been set out in detail.

After the amendment, paragraph 22(f) has been added, which is in these terms—

“(f) That the order supplied to the petitioner Annexure ‘G’ which is dated 31st December, 1959, is illegal because that part of the Punjab Cinemas (Regulation) Act, under which this order has been passed is *ultra vires* the Constitution of India;”

In addition to the point, which has been raised in the aforesaid paragraph 22(f), the other points have been enumerated by me at page 3 of my previous order, dated the 17th of February, 1960. I would deal with these points in the order in which they have been set out.

The first contention is that the power to grant or renew a licence under the Punjab Cinemas (Regulation) Act, 1952 (No. XI of 1952), and the Rules made thereunder solely vests with the District Magistrate and the Government as such has no power in the matter. At this stage it will be proper to set out the relevant provisions of the Act and the Rules on which this argument is based. Reference may be made to sections 4, 5, 6,

and 8 and rules 3, 4, 5, 7, 8, 9 and 10 which are in these terms:—

[His Lordship then read sections 4, 5, 6 and 8 and rules 3, 4, 5, 7, 8, 9 and 10 and continued.]

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It will be clear from the provisions of section 4 of the Act that the District Magistrate is the licensing authority. It is no doubt true that Government has the power to constitute a licensing authority other than the District Magistrate, but this has not been done in the Punjab. It cannot be seriously disputed, nor it was, that an exhibitor is entitled to exhibit the films if he satisfies the requirements of the Act and Rules made thereunder. If these requirements are satisfied, the licensing authority has no power to refuse the licence, but must issue the same.

The language of section 5 of the Act enumerates the conditions when licences shall not be granted, implying thereby that the licence shall be granted if those conditions are satisfied. Sub-section (2) of this section makes the authority of the licensing authority subject to the control of the Government. This control, if it is taken to mean control in accordance with the provisions of the Act, will be perfectly in order, but if this provision is intended to refuse a licence, where the provisions of the Act and the Rules made thereunder are satisfied, I have no doubt it will offend against Article 19 of the Constitution. In this connection, reference may be made to the decision of the Supreme Court in *Messrs. Dawarka Prasad Laxmi Narain v. State of Uttar Pradesh and others* (1).

(1) A.I.R. 1954 S.C. 224

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The argument of the learned counsel for the petitioner, as I have already said, is that the power to grant a licence only vests in the District Magistrate. Though that power is subject to the control of the Government, yet it has to be exercised by the District Magistrate and it is he alone who has to apply his mind in a given case whether the conditions of the Act and the Rules are satisfied. In the instant case, the refusal was made not by the District Magistrate, but by him under the orders of the Government,—*vide* annexure 'G', which is in these terms—

"You are hereby informed that Home Department has decided that your Cinema Licence will not be renewed after 31st December, 1959. You may please stop exhibiting of Cinema shows after that date."

This would, in my opinion, be not exercise of the control by the Government as envisaged under section 5(2) of the Act. The District Magistrate had to exercise his discretion under the Act and it is only after he had exercised his discretion that the question of the control of the Government over that exercise could arise. In the present case, the District Magistrate never exercised his discretion and the application for renewal of the licence was turned down not by him in his individual judgment for the reasons that the provisions of the Act had not been complied with, but merely because the Government desired him to do so. In an identical provision in the Uttar Pradesh Act, wherein section 5(3) of that Act is in the same terms as section 5(2) of the Punjab Act, it was held by a Division Bench of

the Allahabad High Court in *Bharat Bhushan v. Cinema and City Magistrate and others* (1), as under:—

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“* * * the word ‘control’ is not confined to mere regulation. It is more comprehensive and includes domination or command over an inferior. No doubt the State Government can lay down general rules or instructions for the guidance of the District Magistrate in the exercise of his discretion.

But the ‘control’ envisaged in the section is not confined to issuing of mere general directions; it includes an interference on the part of the State Government *with the individual decision of a particular case by the District Magistrate*. As pointed out above, the State Government interfered only when the District Magistrate refused to grant the license to any of the parties.”

Therefore, the argument of the learned counsel for the petitioner is correct that the refusal to grant the licence or to renew the licence in the present case by the Government is not justified. It may be mentioned at this stage that under the Act, there is no provision for renewal of a licence, though the rules make a provision for renewal. Though the rules are beyond the Act, it seems the word ‘renewal’ in the rules has been loosely used. In the context, renewal means grant of a licence and every application by a running concern would be an application for the grant of licence and the concern would be entitled to the same if the application satisfies the requirements of the Act and the Rules. In the present case, as the refusal has not

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been by the District Magistrate, the order of the Government refusing to grant the license is beyond its powers and is not justified. The result would be that the application of the petitioner would be deemed to be pending. I would, therefore, issue a direction to the District Magistrate to himself consider the application on the merits and decide the same.

So far the last contention of the petitioner is concerned, I have already dealt with it in my decision while dealing with the first contention. The only provision which he could point out, which could possibly offend the provisions of Article 19 of the Constitution, was under sub-section (2) of section 5 of the Act, namely, that the grant of a licence by the District Magistrate is subject to the control of the Government. As I have already said, that provision would only be violative of the Constitution if it is interpreted to mean that the Government can refuse a licence even when the provisions of the Act and the Rules made thereunder are satisfied. I have already held that this provision does not mean that. It only means that the Government has the power to control the grant of a licence by a District Magistrate, but that control has to be subject to the provisions of the Act and the Rules made thereunder, and I cannot read sub-section (2) of section 5 of the Act as conferring a wider control on the Government whereby a power is given to the Government to regulate the grant of licences in such a manner as to debar a citizen to carry on his trade or business.

The second contention of the learned counsel for the petitioner is that the Government has refused the renewal of the licence on ulterior considerations and as such the order of the Government is *mala fide* and cannot be upheld. In this

connection, he has drawn my attention to annexure 'C' which is in these terms:—

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"Please refer to your letter, dated the 7th December, 1959, regarding the purchase of land for Novelty Talkies, Bhatinda. The Punjab State and another
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2. Please intimate at a very early date if you are prepared to pay the price of the land at the rate of rupees twenty-five per square yard in case it is fixed at this rate by the Government, as also to pay 50 per cent of the total price immediately in lump sum and the balance in two six-monthly subsequent equal instalments. Your reply should reach Government immediately and in any case *not later than 29th December, 1959*. The question of further renewal of your licence will be examined on receipt of your reply."

This letter from the Government to the petitioner was followed by a notice, annexure 'F', which is in these terms:—

"Office of the District Magistrate,
Bhatinda.

No.—, dated, Bhatinda the Jan—1960.

NOTICE

Government have decided that licence of Novelty Talkies, Bhatinda, should not be renewed after the 31st December, 1959. This order was conveyed to the Manager,—*vide* this office No. 7892A/Misc., dated 31st December, 1959/1st January, 1960 but, as per report of the Office Peon, Shri Bishan Nath refused to receive the notice and instead concealed himself in his house. An effort was made to serve

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this notice through the S.H.O., P.S. Kotwali, Bhatinda, but he too has reported that neither the Manager nor the Proprietor is available. In the circumstances, the service of this notice is made by posting on the premises of the Novelty Talkies.

(Sd)

G. A.

for District Magistrate, Bhatinda.

14 Y.O.S.K.B.T.I.

4th January, 1960.

and annexure 'G', which I have already set out *in extenso* while dealing with the first contention. If these documents are read together, there can be no manner of doubt that the licence in the instant case has been refused not on the ground that the building did not conform to the rules. The contention of the learned Counsel for the petitioner is that the licence has not been renewed because the Government had decided that it would only be renewed if the land on which the building is situate was permanently acquired by the petitioner, and he having failed to do so within the time specified, the renewal of the licence was refused. The contention of the learned counsel for the State, on the other hand, is that the licence has been refused on the ground that even today the building does not conform to the rules and all through as a special case the petitioner was granted the licence after exempting him from the requirements of the Act and the Rules. This is no doubt true, and it is also true that the petitioner cannot claim exemption from the Rules as of right. The grant of exemption is a matter purely within the discretion of the licensing authority, which

discretion is subject to the control of the Government, but in the instant case, as I have already said, the ground on which the refusal has been made is not that the provisions of the Act or the Rules are not complied with. On the other hand, if annexures 'C' and 'G' are read together along with the connected correspondence which resulted in the final order, annexure 'G', there is no manner of doubt that the refusal has been made not because there is no compliance with the provisions of the Act and the Rules, but because of the failure of the petitioner to acquire the land permanently by a specified date. Therefore, I am constrained to hold that the refusal to renew the licence as conveyed by the District Magistrate to the petitioner is based on extraneous considerations and is, therefore, *mala fide*.

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Coming to the third contention, namely, that no opportunity was afforded to the petitioner to make a representation before the Government finally cancelled his licence, it may be stated that there is no provision in the Act for this purpose, so far the Government is concerned. In case, the grant of a licence is refused by the District Magistrate, an appeal is provided to the Government. [See sub-section (3) of section 5 of the Act.] I have already dealt with the jurisdiction of the Government to grant or refuse to grant a licence while dealing with the first contention, and I have held that the Government has no power under the Act to grant or refuse to grant a licence. The only power that the Government has is to cancel a licence, (See section 8 of the Act) or to control the grant or refusal of a licence [see section 5(2)]. As the Government has no power to grant a licence, the question of giving opportunity in case of refusal to grant a licence does not arise for consideration.

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The result of the aforesaid discussion is that the order, annexure 'G', being without jurisdiction and being *mala fide* is quashed. In the result the application of the petitioner for grant or renewal of a licence would be deemed to be pending and the District Magistrate is directed to consider and decide the same according to law. The petitioner will have his costs, which I assess at Rs. 100.

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APPELLATE CIVIL

Before D. K. Mahajan, J.

GURDIT SINGH,—Appellant.

versus

EMPLOYEES STATE INSURANCE CORPORATION,—

Respondent.

F.A.O. 89 of 1959.

1960
March, 7th

Employees State Insurance Act (XXXIX of 1948)—Section 53 and Rules 4 and 5 in the Second Schedule—Scope of—Insured leaving widow and aged parents—Widow remarrying—Dependants' benefit—Whether parents entitled to.

Held, that the provisions of sub-section (2) and sub-section (3) of section 53 of the Employees State Insurance Act, 1948, are mutually exclusive. Rule 4 in the Second Schedule covers cases under section 53(2) and Rule 5 those under section 53(3). It is significant that in Rule 4 while providing for the contingency of remarriage, it is not provided that the dependants' benefit will go to the parents, whereas Rule 5 only comes into play in case the deceased person does not leave a widow or a legitimate child or children. Thus when an insured person dies leaving a widow and aged parents and the widow remarries and does not claim the dependants' benefit, the parents also are not entitled to claim that benefit.