

I. L. R. Punjab and Haryana

(1967)2

LETTERS PATENT APPEAL

*Before Mehar Singh, C.J., and Daya Krishan Mahajan, J.*HARI KRISHAN SHARMA,—*Appellant.**versus*

THE SUB-DIVISIONAL OFFICER (LICENSING AUTHORITY)

AND ANOTHER,—*Respondents.*

Letters Patent Appeal No. 245 of 1963.

October, 4, 1966.

Punjab Cinemas (Regulation) Act (XI of 1952)—S. 5—Refusal of application for grant of a licence to run a Cinema in a town having population of less than 20,000 on the ground that a cinema is already existing there—Whether valid.

Held, that neither in the Punjab Cinemas (Regulation) Act nor in the Rules framed thereunder is there any provision which refers to the consideration of the size of the population of the town in the matter of grant of licence for a cinema. The existence of a cinema already in the town and refusal of the application for the grant of a licence to run another cinema in that town on that ground, is to give economic protection to that cinema owner and to create a sort of monopoly in his favour. The creation of such a monopoly is to be deprecated and is not in the public interest. It is no duty of the State and the authorities to avoid healthy competition. Hence the consideration of the size of the population of a town and the existence of another cinema therein are not germane to the matter of granting a licence for a cinema and the order refusing the licence on these considerations alone is invalid. The licensing authority is not compelled to grant a licence for a cinema to every body but it has to look to the provisions of the Act and the Rules made thereunder and to proceed to act in accordance with the same.

Letters Patent Appeal under Clause X of the Letters Patent against the order of the Hon'ble Mr. Justice Shamsher Bahadur, dated 23rd May, 1963 in Civil Writ No. 919 of 1961.

ANAND SARUP AND R. S. MITTAL, ADVOCATES, for the Appellant.

D. S. TEWATIA AND U. D. GAUR, ADVOCATES, for the Respondents.

JUDGMENT

The following judgment of the Court was delivered by—

MEHAR SINGH, C.J.—This is an appeal by Hari Krishan Sharma, appellant under clause 10 of the Letters Patent from an order, dated May 23, 1963, of a learned Single Judge dismissing his petition under article 226 of the Constitution, wherein

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the appellant had challenged the legality and validity of an order, dated June 5, 1961, Annexure 'K' by respondent 1, the Sub-Divisional Officer (Licensing Authority) under the Punjab Cinemas (Regulation) Act, 1952 (Punjab Act No. XI of 1952), hereinafter to be referred to as the Act, who had dismissed his application for the grant of a licence for a cinema under section 5 of the Act.

The appellant made an application for a licence on February 24, 1958, for a cinema under section 5 of the Act and the licensing authority by his order, dated April 23, 1958, intimated to him that the site proposed by him for the cinema was approved and he was required to submit a plan of the building within the stated period. In the meantime, respondent 2, Sultan Singh, also made a similar application for a licence to construct and run a cinema. Both the appellant and respondent 2 sought a licence for a cinema at Jhajjar. The Sub-Divisional Officer, who was the licensing authority under the Act, instead of deciding those applications himself, forwarded the same to the State Government, which by its letter of February 18, 1959, informed the licensing authority that it had no objection to the grant of a licence to respondent 2 but that the application of the appellant had been rejected.

The appellant came in a petition under article 226 of the Constitution to question the legality of that order of the State Government and in the case reported as *Hari Kishan Sharma v. The Punjab State and others* (1), the order of the Government was quashed on the simple ground that it was not the licensing authority under the Act and it could not substitute itself as a licensing authority for the Sub-Divisional Officer, who was the licensing authority, because of its power of control over the licensing authority under sub-section (2) of Section 5 of the Act. The State Government filed an appeal against the judgement of this Court which was dismissed by their Lordships of the Supreme Court and the case is reported as *The State of Punjab and another v. Hari Kishan Sharma* (2). Sultan Singh, respondent 2, was not a party to those proceedings. The order granting him a licence for a cinema in Jhajjar was also the order of the Government, but, as he was not a party to those proceedings, the part of the order in his favour obviously was not directly under challenge. The direction on the petition of the appellant was that his application under section 5 of

(1) I.L.R. (1961) 2 Punj. 831=1961 P.L.R. 580.

(2) A.I.R. 1966 S.C. 1087.

the Act be heard by the licensing authority and disposed of according to the provisions of the Act and the law.

It was after that that the application of the appellant again came before the licensing authority, respondent 1. He proceeded to reject that application on June 5, 1951, by his order of which a copy is Annexure 'K', and the operative part of the order, after stating the history of the matter, is paragraph 6 which speaks in this manner. "It is to be observed that the permission to construct the hall to Ch. Sultan Singh (respondent 2) was given by the competent authority, viz., Licensing Officer, Jhajjar. His order, therefore, in my opinion, is not open to any objection. The population of the town is less than 20,000. In these circumstances mentioned above, it is regretted that permission for constructing another cinema hall at Jhajjar cannot be granted". The only ground for the order is that there is already one cinema in Jhajjar town and as the town has a population of less than 20,000, so the appellant could not have a licence for another cinema in the same town. An appeal is provided from an order of the licensing authority refusing to grant a licence and that is by sub-section (3) of Section 5 of the Act, but the appellant did not file any appeal to the State Government under that provision and straightway filed a petition under article 226 of the Constitution challenging the legality of the order of the licensing authority, respondent 1. It has been explained by the learned counsel for the appellant that because previously the State Government had without jurisdiction and authority, refused a licence to the appellant for a cinema at Jhajjar and that order had been successfully challenged by the appellant in this Court and the State Government failed in its appeal before the Supreme Court, there was no possible chance of the appellant having any satisfactory hearing and justice in an appeal to the State Government. It is said that it was in these circumstances that the appellant filed a petition under article 226 of the Constitution straight in this Court. This explains why the appellant did not have recourse to the remedy under the Act and came straight to this Court questioning the legality of the order of respondent 1, the licensing authority.

The main ground of the appellant in his petition has been that the basis of the order of the licensing authority is not germane to the matter of grant of licensee under section 5 of the Act because he has not in any way failed to comply with the provisions of Section 5 of the Act or the provisions of any of the Punjab Cinemas (Regulation), Rules, 1952. On the other hand, the stand on behalf of the

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respondents has been that in a small town having a population of not more than 20,000 a second cinema has not been justified and that, in any case, under section 5 of the Act the licensing authority had the discretion to grant or refuse to grant a licence, and it having exercised its discretion, and it not having been alleged that it had done so *mala fide*, this Court ought not to interfere with its order in exercise of its jurisdiction under article 226 of the Constitution. The learned Single Judge has dismissed the petition of the appellant, noting that in the meantime respondent 2 has erected a regular cinema hall, at Jhajjar and has been running it for sometime, on the ground that the licensing authority has the discretion to grant licences to such persons as it thinks fit. The learned Judge goes on to observe—"It is not difficult to visualise a situation in which more than one person may apply for a licence in a town which has a population of 20,000, as in the present instance. It is not possible to argue on the language of this sub-section (sub-section (2) of Section 5) that the licensing authority is obliged to grant permission to construct cinema halls to all who ask for it..... It cannot be argued, in my opinion, that the licensing authority is precluded from considering the question whether the town has sufficient number of inhabitants to justify the construction of more than one cinema hall. In a spirit of competition it may be that in a small town many applicants may come forward for the grant of a licence to construct a cinema hall. Is the licensing authority bound to give permission to one and all to make construction of the cinema hall? It might lead to a ruinous and uneconomic competition if all persons are granted the licence, as contended for". This is the broad basis upon which the learned Judge has proceeded while dismissing the petition of the appellant.

In this appeal on the side of the appellant reference is first made to *Messers Rasdeep Touring Talkies v. The District Magistrate, Karnal and another* (3), which was a case of refusal of licence to a touring talkie in terms of rule 3(iv) of the 1952 Rules which says that 'a licence to a touring cinematograph shall only be granted for a place where there is no permanent cinema'. The order refusing to grant a licence to a touring cinematograph was challenged and the petition was heard by Narula, J. The learned Judge has at length reviewed the history of the legislation on the subject and he has struck down rule 3(iv) of the 1952 Rules

(3) I.L.R. (1966) 2 Punj. 341.

as unconstitutional and void because it offends against article 19(1)(g) of the Constitution, not being saved by clause (6), the restriction placed by the sub-rule being extremely harsh and absolutely unreasonable tending to thwart rather than advance the purposes of the Act which are to regulate entertainment, amusement and recreation by the exhibition of cinematograph films consistent with public health and safety and public tranquillity. At page 357 of the report, the learned Judge observes—"Normally no one would go to the touring cinema if a seat is available for him in the permanent cinema house. But even if it may be assumed that the income of the permanent cinema would conceivably be lesser in case any temporary cinema is allowed to be set up during the eclipse fair than it would be otherwise, it is no part of the State duty to provide for such an economic monopoly in any trade being created. On the other hand, such a provision would appear to be directly against the Directive Principles of State policy contained in article 39 of the Constitution. Such monopoly has no doubt been held to be in the interest of general public so far as enterprises in the public sector such as State Roadways, etc., are concerned. But to allow monopoly to a private citizen against a large number of other citizens has not been shown to have been encouraged by any constitutional provision". It is contended by the learned counsel for the appellant that the licensing authority has so acted as to create a monopoly in favour of respondent 2 by allowing only his cinema in Jhajjar town and refusing a licence for a second cinema to the appellant. It is then said that it may be that if the appellant was given a licence for a second cinema, there would develop competition between him and respondent 2, which would economically affect respondent 2, but, as observed by Narula, J., in the case cited above, it is no duty of the State, much less of a licensing authority as respondent No. 1, to shield the economic position of a particular individual as respondent 2. On behalf of the respondents, their learned counsel have referred to Annexure 'I' filed by the appellant with his petition, in which it is stated that the Punjab Government have decided that when an application for the grant of permission to construct a permanent cinema is referred to them, it should be accompanied by a number of particulars described, and one of those particulars is 'the population of the town where the permanent cinema is proposed to be constructed'. This memorandum is dated September 30, 1957, and is obviously before the decision of this Court in *Hari Kishan Sharma v. The Punjab State and others* (1), subsequently upheld by the Supreme Court, when the Government was entertaining applications for the grant of licences for cinemas and was deciding the same contrary to the provisions of section 5

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of the Act. So this memorandum has no longer any validity. The learned counsel for the respondents have relied upon this memorandum in view of the power of control of the State Government under sub-section (2) of section 5 of the Act in regard to which power their Lordships have observed in *The State of Punjab and another v. Hari Kishan Sharma* (2) that "the control of Government contemplated by section 5 (2) may justify the issue of general instructions or directions which may be legitimate for the purpose of the Act and these instructions and directions may necessarily guide the licensing authority in dealing with the applications for licences. The said control may, therefore, take the form of the issuance of general directions and instructions which are legitimate and reasonable for the purpose of the Act. The said control may also involve the exercise of revisional power after an order has been passed by the licensing authority. It is true that section 5(2), in terms, does not refer to the revisional power of the Government; but having regard to the scheme of the section, it may not be unreasonable to hold that if the Government is satisfied that in a given case, licence has been granted unreasonably, or contrary to the provisions of section 5(1), or contrary to the general instructions legitimately issued by it, it may *suo motu* exercise its power to correct the said order by exercising its power of control. In other words, in the context in which the control of the Government has been provided for by section 5(2), it would be permissible to hold that the said control can be exercised generally before applications for licences are granted, or particularly by correcting individual orders if they are found to be erroneous, but, in any case, Government has to function either as an appellate authority or as a revisional authority, for that is the result of section 5(2) and (3). Government cannot assume for itself the powers of the licensing authority which have been specifically provided for by section 5(1) and (2) of the Act". The learned counsel for the respondents have contended that the memorandum, copy Annexure 'T', are instructions under sub-section (2) of section 5 of the Act, and, in view of these instructions the licensing authority could legitimately take into consideration the population figure of the town of Jhajjar. These instructions are not to the licensing authorities when exercising their powers under the Act in the grant or refusal of licenses, but, those instructions were issued to the licensing authorities to make recommendations to the State Government, which has not been the case here. Therefore, those instructions are not of any assistance to the argument on the side of the respondents.

Neither in the Act nor in the Rules of 1952 is there any provision which refers to the consideration of the size of the population of the town in the matter of grant of licence for a cinema. The licensing authority has given no other ground which is supported by any provision of the Act or the Rules of 1952 for refusal to give a licence to the appellant. The one ground given by it that there is already a cinema hall of respondent 2 in a town of a population of less than 20,000. What this means is practically to give economic protection to respondent 2 and to create a sort of monopoly in his favour, something which has been deprecated by Narula, J., in *Messrs Rasdeep Touring Talkies v. The District Magistrate, Karnal and another* (3) and I respectfully agree with the approach of the learned Judge in this respect. It has then been said that section 5 (2) gives discretionary power to the licensing authority to grant a licence under the Act 'to such persons as it thinks fit', and it is contended that so long as the authority does not act *mala fide*, its order ought not to be interfered with. In this respect, reliance is placed on *Veerappa v. Raman and Raman Ltd.* (4) in which with regard to jurisdiction of tribunals under the Motor Vehicles Act, their Lordships held that that "Act is a statute which creates new rights and liabilities and prescribes an elaborate procedure for their regulation. No one is entitled to a permit as of right even if he satisfies all the prescribed conditions. The grant of a permit is entirely within the discretion of the transport authorities and naturally depends on several circumstances which have to be taken into account. There is a complete and precise scheme for regulating the issue of permits, providing what matters are to be taken into consideration as relevant, and prescribing appeals and revisions from subordinate bodies to higher authorities". Under the Act or the Rules such detailed matters for regulating the issue of licences are not to be found as in the case of the issue of permits under the Motor Vehicles Act. So the provisions of the two Acts are not quite parallel, and this case does not advance the argument on the side of the respondents. What, however, is contended on the side of the appellant is that the ground given for refusal of the licence to the appellant is not germane to the matter and it is an extraneous consideration in support of the financial interest of respondent 2. This in the circumstances of the case appears to have basis. The reason is that since 1958 at least the appellant and respondent 2 have been pursuing their claims for a licence for a cinema in Jhajjar town. While the appellant succeeded in having the order of the State Government refusing to grant him a licence

(4) A.I.R. 1952 S.C. 192.

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quashed on the ground of want of jurisdiction, the same order, also without jurisdiction with regard to respondent 2, gave this respondent the licence for a cinema, and pursuant to such a licence respondent 2 has set up a cinema and gained thereby. Not that this consideration would weigh in regard to the matter of the claim of the appellant in this appeal, but it supports the contention of the learned counsel for the appellant that the basis of the order is not any consideration in public interest but a consideration for the economic benefit of a private party, respondent 2. This is merely a suggestion based on an inference drawn from the past history of the effort of those parties to obtain a licence for a cinema in this town.

In any event, monopoly is to be deprecated and is not in public interest. It is no duty of the State and the authorities to avoid healthy competition. So the one consideration, upon which the licensing authority has proceeded to reject the application of the appellant, is not germane to the matter of granting a licence for a cinema. The learned Judge was of the opinion that a licensing authority is not compelled to grant a licence for a cinema to everybody and this is correct, but for that matter it has to look to the provisions of the Act and the Rules made thereunder and to proceed to act in accordance with the same.

In the result, this appeal succeeds, the order of the learned Singla Judge is reversed, and so the order of the licensing authority is quashed, with a direction that it shall proceed to decide the application of the appellant according to the provisions of the Act and the Rules made thereunder. There is no order in regard to costs in this appeal.

K. S. K.

CIVIL MISCELLANEOUS

Before Shamsher Bahadur and R. S. Narula, JJ.

SEWA SINGH,—*Petitioner.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 1197 of 1964.

October, 4, 1966.

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—S. 42—East Punjab Holdings (Consolidation and Prevention