

## **N. S. Shethna vs Vinubhai Harilal Panchal on 25 August, 1966**

**Equivalent citations: 1967 AIR 1036, 1967 SCR (1) 574, AIR 1967 SUPREME COURT 1036**

**Author: J.M. Shelat**

**Bench: J.M. Shelat, K. Subba Rao**

PETITIONER:

N. S. SHETHNA

Vs.

RESPONDENT:

VINUBHAI HARILAL PANCHAL

DATE OF JUDGMENT:

25/08/1966

BENCH:

SHELAT, J.M.

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SHELAT, J.M.

RAO, K. SUBBA (CJ)

CITATION:

1967 AIR 1036

1967 SCR (1) 574

ACT:

Bombay Cinema (Regulation) Act 1953 and Bombay Cinema Rules 1954-Licence for exhibiting films and licence for selling tickets renewable from year to year-Contravention of Rules in one year--Whether renewed licence for next year can be suspended.

HEADNOTE:

The respondent carried on the business of exhibiting cinema to graphic pictures at Ahmedabad. Under the Bombay Cinema Rules 1954 framed under the Bombay Cinema (Regulation) Act 1953 such business could be carried on only under a licence renewable from year to year. The respondent held a licence for the year 1960. On June, 1960 a notice was served on him requiring him to show cause why his licence should not be suspended for contraventions of the Rules. An enquiry was instituted in this connection. On December 31, 1960 the licence issued to the respondent for the year 1960 expired

and an endorsement renewing it for the next year i.e., 1961 was made on the same date. Subsequently as a result of the aforesaid enquiry the first appellant passed an order suspending the respondent's licence for two months from the date of service of the order. The service was effected on March 5, 1961. Aggrieved by this order the respondent filed a writ petition in the High Court. The petition was allowed, the High Court taking the view that the renewed licence was a 'separate licence and not in continuation of the licence for 1960 and therefore the renewed licence could not be suspended without a fresh show cause notice. The appellants came to this Court with certificate.

HELD : The fact that under the Bombay Cinema Rules renewal is not a matter of course, the fact that the licensing authority can in proper circumstances refuse an application for renewal and is not precluded from imposing different conditions and can grant it for a different period coupled with the absence of any Rules for renewal are all indications leading to the result that renewal is a fresh grant and is not merely continuation of the licence previously issued. The High Court was therefore correct in allowing the writ petition on a conclusion that the show cause notice relating to the licence for the year 1960 could not be regarded as a show cause notice in respect of the renewal for the next year and if the renewed licence was sought to be affected in the enquiry a fresh show cause notice relating to the renewed licence was necessary. [180 B-D]

V.C.K. Bus Service Ltd. v. The Regional Transport Authorities [1957] S.C.R. 663 and Anish v. R.T.S. [1956] Andhra Law Times, 347, referred to.

#### JUDGMENT:

**CIVIL APPELLATE JURISDICTION :** Civil Appeal No. 580 of 1964. Appeal from the judgment and order dated April 3, 1961 of the Gujarat High Court in Special Civil Application No. 146 of 1961.

N. S. Bindra and B.R. G. R. Achar, for the appellant. S. T. Desai, G. I. Sanghi, and B. R. Agarivala, for the respondent.

The Judgment of the Court was delivered by Shelat, J. This appeal by certificate is directed against the judgment and order of the High-Court of Gujarat quashing the order of suspension of a licence for sale of cinema tickets passed by the first appellant on February, 28, 1961. At all material times the respondent was carrying on and still carries on the business of exhibiting cinematographic picture Lakshmi Talkies in Ahmedabad and had obtained for that purpose a licence for sale of tickets which was valid upto December 31, 1960. On an allegation that through his manager and other employees he was indulging in sale of tickets contrary to the Bombay Cinema Rules, 1954 framed under the Bombay Cinema (Regulation) Act, XX of 1953 a notice dated June 14, 1960 was

served upon him to show cause why the said licence should not be suspended. On an inquiry having been held by the first appellant, that officer passed the impeached order suspending the said licence for a period of two months from the date of service of the order. But before the inquiry was completed and the said order passed, the period for which the licence was issued expired and an order renewing it for the next year, that in 1961, was passed on December 31, 1960. The impugned order was served on the respondent on March 5, 1961.

Aggrieved by the said order the licensee took out a writ petition in the High Court for setting aside the said order. The plea urged in the petition was that the show cause notice related to the licence for the year 1960 which expired on December 31, 1960 and therefore did not affect the renewed licence for 1961 sought to be suspended by the impugned order. The High Court took the view that the renewed licence was a separate licence and not in continuation of the licence for the year 1960 and a fresh show cause notice ought to have been served for suspending the renewed licence and that not having been done the inquiry was not in consonance with the rules and quashed the order. The question arising in this appeal is whether on the licence issued for the year 1960 having been renewed for the next year the renewed licence was in continuation of the licence previously issued and whether the show cause notice issued in relation to the original licence would be sufficient and relate to the renewed licence also. Chapter VII and Chapter VIII of the said rules deal with the licence called the cinema licence and the licence for sale of tickets. Rule 101 in Chapter VII provides that no place shall be opened or allowed to remain open for use as a cinema unless the person being the owner, tenant or occupier thereof has obtained a cinema licence therefor. This licence is obviously for opening a cinema for exhibiting cinematographic films. That is clear from the language of Rule 102 which requires that certain documents set out therein have to accompany an application for this licence. Rules 103 and 104 confer power on the Licensing Authority either to grant or refuse to grant the licence. Rule 106 provides for the period of such a cinema licence and under that Rule the maximum period is one year. Rule 107 confers power on the licensing Authority to renew a cinema licence and provides that an application in the manner laid down in Rule 102 has to be made except that it would not be necessary in such an application for renewal to attach copies of a no objection certificate or of a Building permission issued under Rules 6 and 93. Rule 108 lays down fees for the cinema licence and its renewal and the fees for both are the same. Chapter VIII inter alia deals with a licence for sale of tickets. Rule 11C lays down a ban against selling, keeping, offering or exposing for sale or causing to be sold, kept or exposed for sale any ticket of admission, pass or any other evidence of the right of admission to any cinema without having first obtained a licence for the same from the Licensing Authority. Under that Rule a licence for sale of tickets etc., has to be in Form "F" attached to the Rules. Rules 111 and 112 provide that the tickets have to be sold at the licensed booking office and require the prices and the hours of sale to be notified on a board. Rule 113 provides that such prices are to be printed on the tickets. Under Rule 114 such a licensee has to maintain accurate sets of records showing sale of tickets and their rates and is required also to produce them for inspection by a police officer of the specified rank. Obviously these Rules are intended to prevent the mischief of black-marketing in cinema tickets. Rule 116 provides for fees to be levied for a licence granted under R. 10. There is no separate Rule or provision in this Chapter for a renewal of this licence, except that R. 110 as aforesaid provides that the licence will be in form F. Form E is the form of a cinema licence issued under R. 102 while form F is the form of a licence for sale of tickets issued under R. 1

10. Clauses 3 and 4 of form F are as follows:-

"3. This licence is valid till the.....day of..... 19 and a fee of Rs..... due for the same has been paid by the Licensee.

4. This licence is granted or renewed subject to the provisions of the Bombay Cinema Rules 1953 and is liable to be suspended or cancelled for breach of any of the provisions of the said Rules, and any breach of the provisions of the said Rules is punishable under the provisions of section 7 of the Act."

Thus there is no separate rule or provision 'conferring power to renew. There is also no provision in these Rules laying down procedure for renewal or for fees for such renewal or the conditions on which it may be granted except the insertion in cl. 4 of the word " renewed" which only suggests that a renewal is competent. Rule 131 provides for suspension or cancellation of a licence and lays down that the Licensing Authority may suspend or cancel any licence granted under these Rules for contravention of any of these Rules, provided that the Licensing Authority shall give the licensee an opportunity to show cause before taking any action under this sub-rule.

The contention urged by Mr. Bindra on behalf of the appellant was that the High Court was in error in holding that the show cause notice did not relate to the renewed licence and that the renewed licence was a separate and a distinct licence from the licence previously granted. According to him on a proper interpretation of the Rules the renewed licence is a continuation of the licence previously granted, that the effect of a renewal is merely to extend the term of the licence but that in essence both are one and the same. Therefore, said he, the show cause notice though issued before the term of the original licence had expired and though it mentioned that licence, suspension of the licence proposed therein must affect the renewed licence if the licence previously granted were to be cancelled or suspended. The renewed licence being only for extending the period of the licence previously granted, both are one and the same and if the original licence is suspended or cancelled the renewal also must be affected. The suspension of the licence is a condition subsequent on the occurrence of which the licence would be suspended even if it happens during the renewed period. Mr. Desai on the other hand argued that suspension can only affect a licence during the period for which it is granted and not during a subsequent period and that a renewal granted under Chapter VIII is not a continuation of the licence previously granted. He also argued that the words "renewed" and "renewal" should not be construed as carrying the same meaning in case of all licences issued under different enactments and that the meaning of these words would depend on the scheme and the provisions of each statute. Construed in the light of the present Rules a renewal must mean not a continuation but a separate grant.

We now proceed to examine the validity of these contentions. The Rules relating to the licence for sale of tickets provide as aforesaid that the maximum period for which such a licence can be issued is one year. Renewal of a licence is provided for but only indirectly and in a sort of an off-hand manner by cl. 4 of Form F. It appears therefrom that a licensee has to produce his licence, pay the renewal fee and get entries made on it reverse as to the date of renewal, the period upto which it would be valid on such renewal and the fees having been paid therefore. Since the Rules do not

provide as to how much are the fees for renewal it must be presumed that the fees are the same as for the licence itself. It is clear from the Rules that they do not contain anything to show that the renewed licence is a continuation of the licence previously issued except the fact that the Authority has to make the said entries on the reverse of the licence. The fact that the Rules do not make any provision for the power to renew, the procedure for renewal and for its fees, as is done in Chapter VI in the case of a cinema licence is all indication that the draftsman equated renewal of a licence with the issuance of a licence. It may also be observed that it is not as if renewal is automatic nor is to be granted as a matter of course. If the Licensing Authority desires to impose any fresh conditions there is nothing in the Rules to prevent him from doing so. That being so, a renewal cannot, unless the context requires otherwise, be regarded as a continuation of the licence previously issued. There is also nothing in Chapter VIII or in Form F indicating that the renewal is such a continuation. Mr. Bindra however argued that such a construction would result in nullifying the effect of all order of cancellation or suspension for it is hardly to be expected that proceedings for such a punishment can be completed during the period of the licence, the maximum duration for such a licence being one year only. In the first place we do not see how such a consequence must follow. The procedure for an action under R. 131 is not an elaborate one which would make an inquiry thereunder a prolonged one. In the second place, unless the Rules are found to be ambiguous we do not see how a particular consequence can affect the construction of the Rules. On the other hand if we were to treat renewal as continuation of the licence previously granted in a case where a licence is renewed from year to year—as it would be in a large number of cases, even if a licensee has committed breach of one of the conditions of the licence in any particular year, action against him can be taken in any subsequent year and his licence would be liable to be cancelled or suspended during any such subsequent year for a breach committed by him several years ago. That in some cases penalty by way of suspension might be nullified by reason of expiry of the period of the licence cannot be allowed to affect the interpretation of plain and unambiguous words in a statute or a rule.

In support of his contention that a renewal is no more than a continuation of the licence previously granted, Mr. Bindra heavily leaned on the decision in *V. C. K. Bus Service Ltd. v. The Regional Transport Authority*.<sup>(1)</sup> In that case a permit for stage carriage was (1) [1957] S.C.R. 663.

granted to the appellant under the Motor Vehicles Act, 1939. The appellate authority at the instance of the unsuccessful applicant set aside that order and the government in revision approved the order of the appellate authority and dismissed the revision. The appellant then moved the High Court by a writ petition and during the pendency of that petition the High Court stayed the order, with the result that the appellant could run his buses notwithstanding the cancellation of the order granting him the permit. In the meantime the period fixed under that permit expired and the appellant applied for and got a renewal of the permit under sec. 58(2) of the Act. The High Court ultimately dismissed the writ petition. The question arose as to whether the renewal was a continuation of the permit previously granted and whether such renewal went away along with the original permit on its cancellation. This Court held that the renewal was a continuation of the previously granted permit and not a fresh grant and the cancellation of the original permit resulted in the cancellation of the renewal also. The argument urged on behalf of the appellant was that under the Act an application for renewal had to be dealt with exactly in the same manner as an application for a new permit, that when renewal was granted it was on an independent consideration of the merits and further that the

granting of renewal was not a matter of right for the authorities would be acting within their power if they were to refuse an application for renewal. It was also contended that though in the case of a lease renewal might mean continuation of the lease for a further period on the same terms and conditions contained in the lease and therefore a renewed lease would be treated as extension of the original lease that consideration was not available in the case of renewal of a licence as it was open to the Licensing Authority to impose new conditions, to alter the period during which it was to operate and generally to modify its terms. Therefore, the use of the word renewal would not lead to an inference that it was the original permit which was being continued. It is noteworthy that Venkatarama Ayyar J. who spoke for the Court said that there was force in those contentions. But lie did not sustain them because in the context of s. 58 and the Rules made under the Act and in particular Rule 185 the conclusion that renewal in that case was continuation of the original permit was inevitable. In dealing with the reasoning in Anish v. R. T. S. Guntur(1) which was relied on and in which a contrary view was taken, the learned Judge again observed at p. 673 that "these considerations though not without force cannot, in our opinion, outweigh the inference to be drawn from the other provisions to which we have made reference..... It is thus clear that the decision did not lay down a general rule that renewal in all cases must mean, (1) (1946) Andhra Law Times, 347.

continuation of the grant previously made but was rested on the language of the provisions of the Motor Vehicles Act and the Rules made thereunder. As already observed there are no such Rules in the Bombay Cinema Rules, 1954 which led this Court to the conclusion in that case that the renewed permit for stage carriage was continuation of the permit previously granted and therefore this decision would not assist the appellant.

In our view the fact that renewal is not a matter of course, the fact that the licensing authority can in proper circumstances refuse an application for renewal and is not precluded from imposing different conditions and can grant it for a different period coupled with the absence of any Rules for renewal are all indications leading to the result that renewal is a fresh grant and is not merely continuation of the licence previously issued. The High Court was therefore correct in allowing the writ petition on a conclusion that the show cause notice relating to the licence for the year 1960 could not be regarded as a show cause notice in respect of the renewal for the next year and if the renewed licence was sought to be affected in the inquiry a fresh show cause notice relating to the renewed licence was necessary.

In the result, the appeal fails and is dismissed with costs.

G.C.

Appeal dismissed.