

Mohd. Ibrahim Khan Ors vs State Of Madhya Pradesh & Ors on 21 September, 1979

Equivalent citations: 1980 AIR 517, 1979 SCC (4) 458

Author: D.A. Desai

Bench: D.A. Desai, R.S. Pathak

PETITIONER:

MOHD. IBRAHIM KHAN ORS.

Vs.

RESPONDENT:

STATE OF MADHYA PRADESH & ORS.

DATE OF JUDGMENT 21/09/1979

BENCH:

DESAI, D.A.

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DESAI, D.A.

PATHAK, R.S.

CITATION:

1980 AIR 517

1979 SCC (4) 458

ACT:

M.P. Cinema (Regulation) Act 1952, S. 5(3) & M.P. Cinema (Regulation) Rules 1972, Rules 3-6-Objection not raised at the time of granting of no objection certificate-Objection if could be raised at the time of renewal of quasi-permanent cinema licence.

Administrative Law-Doctrine of natural justice-Administrative authority-Whether under a duty to give notice and hear parties at every renewal of licence-Whether under a duty to hear all objectors. M.P. Cinema (Regulation) Act 19 S. 5(3).

HEADNOTE:

The third respondent made an application for the grant of a licence for a temporary cinema and the District Magistrate issued a no-objection certificate for a period of six months. This licence was renewed twice but a subsequent application for renewal was turned down by the District Magistrate on the ground that the 'Paras Talkies' with a

permanent cinema Licence in the locality which was hitherto closed had started functioning and, therefore, a renewal of the licence for a temporary cinema in the same locality would not be proper. In appeal, the State Government granted respondent 3 a licence for a quasi-permanent cinema.

The appellants in their writ petition questioned the validity of the State Government's order on the ground that they were the residents of the locality and that they had objected to the grant/renewal of licence on the ground that there was a mosque, a madrasa and a temple in the vicinity of the place, where the cinema house was to be constructed and even though their objections were upheld by the licensing authority, the District Magistrate, they were not heard in the appeal preferred by the third respondent and therefore, the order of the first respondent, State of M.P. suffers from the vice of violation of the principles of natural justice. The High Court held that since the matter was left to the subjective satisfaction of the State Government, the State Government on being satisfied that there was no impediment to the grant of such a licence, was perfectly justified in granting the same, and that this was not a fit case for interference by the High Court.

In the appeal to this Court it was contended on behalf of the appellants, that as objectors they should have been heard and the decision arrived at by the State Government in appeal at their back was violative of the principles of natural justice and the order granting licence for a quasi-permanent cinema by the State Government was invalid.

Dismissing the appeal,

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HELD:

(per Desai, J.)

1. There is nothing in M.P. Cinema (Regulation) Act, 1952 or the M.P. Cinema (Regulation) Rules 1972 which require the licensing authority

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to invite objections before grant of a quasi-permanent cinema licence. The right to object is at the initial stage when a no-objection certificate is applied for by the intending applicant for such a certificate. But there is no provision for inviting objections when the application is for a permanent or quasi-permanent cinema licence or a touring cinema licence. [800 G]

2. There is no provision in the Act or Rules which requires advertisement of such an application inviting objections and consideration of the objections before grant of a cinema licence. [800 H]

3. When an application for no-objection certificate is made, objections have to be invited in the prescribed manner. There can conceivably be hundred of objections. There is no question of giving a personal hearing to each objector. If after taking into consideration the objections a no-objection certificate is granted, there ends the matter

subject, of course, to any properly constituted legal proceedings, conceivably a writ petition under Article 226. [800 C]

4. Sub-s. (3) of s. 5 of the Act is unambiguous when it provides for an appeal only at the instance of a person aggrieved by the decision of the licensing authority refusing licence. A fortiori every objector to grant of a no-objection certificate is not entitled to file an appeal if such certificate is granted rejecting his objections. Nor in an appeal by the aggrieved person within the meaning of s. 5(3) every objector to the grant of a no-objection certificate is entitled to be joined as a party respondent or that each objector is entitled to notice of hearing of the appeal. [800 D-E]

5. The grievance of the appellants is without merits because initially when no-objection certificate was applied for they did not object and one who has not objected cannot subsequently make a grievance. [800 F]

Jasbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmed & others [1976] 3 SCR 58. referred to.

6. A right to notice by reason of any rule of natural justice, which a party may establish, must depend for its existence upon proof of an interest which is bound to be injured by not hearing the party claiming to be entitled to a notice and to be heard before an order is passed. If the duty to give notice and to hear the party is not mandatory, the actual order passed on a matter must be shown to have injuriously affected the interest of the party which was given no notice of the matter. [1801 C-D]

Cosmosteels Private Ltd. v. Jairam Das Gupta & Ors. [1978] 2 SCR 422 at 431, referred to

7. There is no substance in the grievance that before granting renewal of quasi-permanent cinema licence the State Government in the appeal filed by the third respondent had not heard them and that such a decision was rendered in violation of the principles of natural justice. [801 E]

In the instance case, the application for a no-objection certificate and granting of the same had passed muster long before, and appellants had not raised any objection to the grant of no-objection certificate. When the present appellants objected to the renewal of a quasi-permanent cinema licence it was not the

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stage for grant of a no-objection certificate but it was the stage of renewal of quasi-permanent licence subsequent to the stage of granting of a no objection certificate, when there was no statutory obligation in the licensing authority to invite objections nor were the appellants entitled to file objections and nor were they entitled to be heard. [801 A-B]

(per Pathak J. concurring)

1. Rules 3 to 6 of the M.P. Cinema (Regulation) Rules 1972, relate to the grant of a "No objection" certificate.

The Rules contemplate the filing of objections by local residents. That is the stage at which opposition to the establishment of a cinema at the proposed site is specifically provided for. Any person opposing the establishment of a cinema at the proposed location must do so before a 'No-objection' certificate is granted. [802 B-C]

In the instant case, the appellants did not file any objections opposing the establishment of a cinema. A "No-objection certificate" was granted to the third respondent. When the third respondent applied for a cinema licence, the appellants for the first time opposed the application on the grounds that there was a mosque, a madras and a temple in the vicinity. Inasmuch as these grounds were available to them during the proceedings for considering the grant of a 'No-objection' certificate, and they did not file any objection, they cannot now be permitted to plead a right to oppose the grant of a cinema licence. Had they, opposed the grant of the 'no-objection' certificate and their objection had made out a good case, it is possible that the 'no-objection' certificate would have been refused, and in that event the applicant would not have applied for a cinema licence. [802 D-F]

2. The question whether a person who has objected to the grant of a "NO objection certificate" certificate when that grant was under consideration can subsequently oppose the grant of a cinema licence on the same grounds which he took against a 'no-objection' certificate left open. [802 H-803 A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1199 of 1978.

Appeal by Special Leave from the Judgment and order dated 6-3-1978 of the Madhya Pradesh High Court in M.P. No. 109/78.

G. B. Pai and S. S. Khanduja for the Appellant. S. K. Gambhir for Respondents 1 and 2 G. L. Sanghi, R. K. Jain and R. Ramachandran for The following Judgments were delivered:

DESAI, J.-This appeal by special leave is directed against the order dated 27th December 1977 made by the State of Madhya Pradesh granting a licence for a quasi-permanent cinema to respondent no. 3 Prem Narayan son of Ganpatlal Chouksey, proprietor, Chitra Talkies, Lalbagh, Burhanpur (M.P.) against which a petition under Article 226 of the Constitution by the petitioners was dismissed in limine by a speaking order by the High Court of Madhya Pradesh at Jabalpur on 6th March 1978.

Third respondent made an application on 5th December 1975 for grant of a licence for a temporary cinema and the District Magistrate having jurisdiction issued a no objection certificate vide his order dated 10th February 1976 for a period of six months. This licence was renewed upto 30th June 1976 and there was a further renewal up to 30th September 1976. A subsequent application for renewal was turned down by the Distt. Magistrate by his order dated 29th June 1977 on the ground that Paras Talkies with permanent cinema licence which was closed, has now been functioning in the locality and, therefore, a renewal of the licence for a temporary cinema in the same locality would not be proper. Respondent 3 carried the matter in appeal to the State Government which by its order dated 27th December 1977 granted a licence for a quasi-permanent cinema under the M.P. Cinemas Regulation Rules to the third respondent. Present petitioners filed a petition under Article 226 questioning the validity of the aforementioned order of the State Government conceding, inter alia, that they were the residents of the locality and that they had objected to the grant/renewal of licence on the ground that there is a mosque a madrasa and a temple in the vicinity or the place where the cinema house is to be constructed, and even though their objections were upheld by the licensing authority, the District Magistrate, they were not heard in the appeal preferred by the third respondent and, therefore the order of the first respondent State of Madhya Pradesh suffers, inter alia, from the vice of violation of the principles of natural justice. The High Court was of the opinion that District Magistrate was not influenced by the fact that there was a mosque, and a temple in the vicinity of the place where the proposed cinema house was to be constructed but he was influenced by an extraneous consideration that a cinema having a permanent cinema licence having been re-opened in the locality there was no need for a cinema house with a 'temporary' licence and that it being a matter left to the subjective satisfaction of the State Government, the State Government on being satisfied that there was no impediment to the grant of such a licence, was perfectly justified in granting the same and, therefore, it is not a fit case for the interference of the High Court. The appellants thereupon filed this appeal by special leave.

Mr. G. B. Pai, learned counsel who appeared for the petitioners, contended that if before the grant of a quasi- permanent cinema licence to the third respondent the appellants filed their objections which were taken into consideration by the Distt. Magistrate, the licensing authority, and if the Distt. Magistrate was impressed by the objections and, therefore, turned down the request for 'temporary cinema licence, in an appeal against this order preferred by the third respondent, the appellants as objectors should have been heard and the decision arrived at by the State Government appeal at their back was violative of the principles of natural justice and the order granting licence for quasi-permanent cinema by the State Government is invalid.

Before we examine the contention canvassed on behalf of the appellants it is necessary to glance at the relevant provisions of M.P Cinemas (Regulation) Act, 1952

('Act' for short). Section 3 imposes a restriction on exhibition by means of cinematograph at any place other than a licensed place under the Act in compliance with the restrictions or conditions imposed by such licence. Section 4 nominates the Distt. Magistrate as the licensing authority. Section 5 provides for conditions subject to which licence may be granted. Sub-s. (3) of s. 5 provides for an appeal at the instance of a person aggrieved by the decision of a licensing authority refusing to grant a licence under the Act to the State Government within the prescribed time.

Section 6 confers power on the State Government or the local authority to suspend exhibition of films. Section 7 prescribes penalties for breach of the provisions of the Act. Section 8 confers power to revoke a licence under certain circumstances. Two things emerge from the Act. Firstly, that the detailed provisions for the grant of a licence at three distinct stages by the licensing authority in the process of licensing a cinema house, viz., (i) no- objection certificate for the site on which the cinema house is to be constructed; (ii) licence for the building conforming to the rules where films are to be exhibited; and

(iii) licence for exhibition of films, are made in the rules and there is no reference to any of the three licences in the Act. Secondly, appeal is provided against the order of a licensing authority only at the instance of a person aggrieved by the decision of the licensing authority refusing to grant a licence. The Act does not confer any right of appeal on a person who might have raised objections before the licensing authority against the grant of a no- objection certificate or a licence, as the case may be. This last aspect is very relevant because the entire submission is based on a contention that the appellants who had objected to the grant of a no-objection certificate to the third respondent and had succeeded in persuading the licensing authority to refuse the grant of no-objection certificate to the third respondent, yet in the appeal preferred by the third respondent under sub-s. (3) of s. 5 the State Government did not give any opportunity to the successful objectors and decided the appeal at their back and thus the decision was rendered in violation of the principles of natural justice.

Next a reference to the relevant rules of M.P. Cinema (Regulation) Rules, 1972 ('Rules' for short), is necessary. Rule 3(2) provides that any person desirous of erecting a cinema or converting existing premises into a cinema shall first make public his intention to do so by exhibiting a notice in the prescribed form on a board on the proposed site in such position that it can be plainly seen from the public thoroughfare upon which the site of such proposed cinema abuts. This rule also prescribes the size of the board, the language in which the notice is to be published, etc. Sub-rule (3) of rule 3 provides that such a person shall also give a similar notice in writing to the licensing authority, viz., the Distt. Magistrate and make an application to him for the grant of a no-objection certificate specifying therein whether the application is in respect of a permanent cinema or a touring cinema. Rule 4 provides that on receipt of notice as envisaged by Rule 3, the licensing authority shall, at the cost of the applicant, notify the public such intention in such manner by publication in newspapers or otherwise that may deem fit for the purpose of inviting objections. It is also obligatory for the licensing authority to issue a notification inviting objections specifying therein the period within which the objections shall be lodged. Rule 5 provides that the licensing authority shall on the expiry of the period for receipt of the objections, submit a report to Government in the prescribed form along with his recommendation whether a no-objection certificate shall be granted or not. Sub-rule

(2) of rule 5 provides that Government may, on consideration of the report of the licensing authority, grant permission for the issue of no-objection certificate to the applicant or may refuse to grant the same. Rule 6 provides that without prejudice to the right of the licensing authority to refuse or to grant a cinema licence under rules 101 and 102', the licensing authority may, with the previous permission of the government, grant a certificate to the applicant that there is no objection to the location of the cinema at the site notified by the applicant under rule 3. Sub-rule (2) of rule 6 provides that such a no-objection certificate shall be valid for a period of two years from the date of issue in the case of permanent cinemas and six months in the case of touring cinemas. Chapter VII of the Rules provides for cinema licence. Rule 100 provides that an application for a cinema licence shall be accompanied, amongst others, by a copy of the no-objection certificate issued under rule 6. Rule 101 confers power on the licensing authority to grant a cinema licence on being satisfied that all the relevant rules have been complied with and the licence may be granted on such terms and conditions and subject to such restrictions as the licensing authority may determine. There is a proviso to rule 101 which reads as under:

"Provided that a touring cinema licence shall not be beyond the district of issue and ordinarily touring cinema licences shall not be granted for places where there is already a permanent or a quasi-permanent cinema, but the licensing authority may in its discretion permit a touring cinema to operate at a place where there is already a permanent or quasi-permanent cinema on occasions such as fairs and melas or when the touring cinema exhibits films of a kind different from those exhibited by non-touring cinemas such as educational films or where it caters for a different public".

In view of the proviso, it would not be correct to say that District Magistrate was influenced by an extraneous consideration, namely, re-opening of Paras Cinema with a permanent cinema licence while rejecting the application of third respondent for renewal of his licence by the order dated 29th June 1977. Rule 104 provides that a permanent cinema may be licenced for any period not exceeding one year and a quasi-permanent cinema or a touring cinema may be licenced for any period not exceeding six months.

A perusal of the relevant provisions of the Act and the Rules extracted above will show that there are various stages through which an application for a cinema licence has to be processed. It also transpires that the Rules envisage issuance of a licence for a permanent cinema and quasi-permanent cinema as well as a touring cinema. Cinema in this context has been defined to mean any place wherein an exhibition by means of cinematograph is given.

Rule 3 envisages construction of a cinema house and as a first step, selection of a site where the cinema house is to be located. Selection of the site and its clearance by the licensing authority by the issuance of a no-objection certificate is an important step to be taken in the direction of finally constructing a cinema house and obtaining a licence for the same. In the facts of this case the application is for a quasi-permanent cinema licence. When any person desires to erect a cinema meaning thereby a place where an exhibition by means of cinematograph is to be given, he must apply for a no-objection certificate in respect of the site where the cinema house is to be constructed.

When such an application is received, it is to be advertised in the manner prescribed inviting the public to file objections. After considering the objections the licensing authority has to decide whether to grant or refuse the no-objection certificate. This scheme emerges from the combined reading of rules 3, 5 and 6. Chapter III in the Rules prescribes rules in respect of the building to be used as a cinema house. But before one proceeds to construct the cinema, obtaining of a no-objection certificate relevant to the site on which cinema to be constructed is a *sine qua non*.

The grievance of the appellants is that when their objections were invited before issuance of a no-objection certificate and they filed the same, the Distt. Magistrate as the licensing authority was persuaded to accept the objections and reject the application for a no-objection certificate and thereafter when under s. 5(3) of the Act respondent preferred ar. appeal against the refusal to grant the no-objection certificate, the appeal was decided at the back of those who had not only filed objections but whose objections had prevailed with the licensing authority and, therefore, the order granting the no-objection certificate is violative of the principles of natural justice. There is a two-fold fallacy in this submission.

Respondent 3 has been granted a quasi-permanent cinema licence by the State Government allowing his appeal against the order of the E Distt. Magistrate refusing such a licence. The order impugned by the third respondent in the appeal before the State Government is Annexure 'E' dated 29th June 1977. A perusal of this particular order would show that initial application for no-objection certificate was made by the third respondent on 5th December 1975. An advertisement was issued in 'Nai Duniya' dated 5th January 1976 by the licensing authority that an application for a temporary cinema licence akin to quasi-permanent cinema licence has been received and that any one who desires that no-objection certificate should not be given may file his objections. After considering those objections no-objection certificate was granted by order dated 10th February G. 1976. No exception appears to have been taken to this order granting no-objection certificate. English rendering of the order raised some doubt whether a no-objection certificate was granted or a quasi-permanent cinema licence was granted. Original file was called. Simultaneously, a certified copy of the original order in Hindi was shown to us at the hearing of the appeal which clearly H. shows that a no-objection certificate was granted limited to the duration of six months. Thereafter a quasi-permanent cinema licence was granted. This licence was renewed twice over up to and inclusive of 30th September 1976. Subsequently by the impugned order dated 29th June 1977 this licence was not renewed. Let it again be made clear that the application was for a quasi-permanent cinema licence. This order refusing to renew quasi-permanent cinema licence was challenged by the third respondent before the State Government and which appeal was allowed giving rise to the petition by the appellants.

When an application for no-objection certificate is made, objections have to be invited in the prescribed manner. There can conceivably be hundreds of objections. There is no question of then giving a personal hearing to each objector. If after taking into consideration the objections. a no-objection certificate is granted, there ends the matter subject, of course, to any properly constituted legal proceedings, conceivably a writ petition under Article 226. But sub-s. (3) of s. 5 of the Act is unambiguous when it provides for an appeal only at the instance of a person aggrieved by the decision of the licensing authority refusing licence. A fortiori, every objector to renewal is not

entitled to file an appeal if licence is granted rejecting his objections. Nor in an appeal by the aggrieved person within the meaning of s. 5(3) every objector to the grant of no-objection certificate is entitled to be joined as a party respondent or that each objector is entitled to notice of hearing of the appeal. however, the grievance of the appellants it without merits because initially when no-objection certificate was applied for they did not object and one who has not objected cannot subsequently make a grievance [see *Jashbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmed & others*(1)].

The second fallacy is that rules 3 to 6 envisage an advertisement of an application for a no-objection certificate and inviting objections 'hereto and disposal of such an application. There is, however, nothing in the Act or the rules which requires the licensing authority to invite objections before grant of a quasi-permanent cinema licence. The right to object is at the initial stage when a no-objection certificate is applied for by the intending applicant for such a certificate. But there is no provision for inviting objections when the application is for a permanent or quasi-permanent cinema licence or a touring cinema licence. There is no provision in the Act or Rules which requires advertisement of such an application inviting objections and consideration of the objections before grant of a cinema licence. In A this case the application which was turned down by the Distt. Magistrate was one for renewal of a quasi-permanent cinema licence. The application for a no-objection certificate and granting of the same had passed muster long before on 10th February 1976 and appellants had not raised any objection to the grant of no-objection certificate. When the present appellants objected to the renewal of a quasi-permanent cinema licence it was not the stage for grant of a no-objection certificate but it was the stage of renewal of quasi-permanent licence subsequent to the stage of granting of a no-objection certificate, when there was no statutory obligation on the licensing authority to invite objections nor were the appellants entitled to file objections and nor were they entitled to be heard. A right to notice by reason of any rule of natural justice, which a party may establish, must depend for its existence upon proof of an interest which is bound to be injured by not hearing the party claiming to be entitled to a notice and to be heard before an order is passed. If the duty to give notice and to hear the party is not mandatory, the actual order passed on a matter must be shown to have injuriously affected the interest of the party which was given no notice of the matter [see *Cosmosteels Private Ltd. v. Jairam Das Gupta & Ors.* There was no statutory or mandatory duty to hear the appellants. There fore, there is no substance in the grievance that before granting renewal of such licence the State Government in the appeal filed by the third respondent had not heard them and that such a decision was rendered in violation of the principles of natural justice.

Mr. Sanghi, learned counsel for the respondents, wanted to contend that the appellants are not acting bona fide in vindication of their own rights but they are a fence or a cloak for the owners of Paras Cinema, the holders of permanent cinema licence in the locality, and the appellants thus being proxies for such a trade rival, they have no locus standi to file the objections. Mr. Sanghi heavily drew upon the observations of this Court in *Jashbhai Motibhai Desai's* case (supra) to make good the submission. Undoubtedly, in the aforementioned case this Court in terms held that a rival in cinema business has no locus standi to question the validity of the order under which the other person has been granted a cinema licence, but as the only contention raised on behalf of the appellants does not commend to us and, therefore, the appeal is likely to fail on that ground alone, it

is not necessary to explore this contention advanced on behalf of the respondents.

There was only one point raised in this appeal and as there is no merit in it, the appeal fails and is dismissed but with no order as to costs.

PATHAK, J.-I agree that the appeal should be dismissed, but on a very short ground.

Rules 3 to 6 of the Madhya Pradesh Cinemas (Regulation) Rules, 1972 relate to the grant of a "no-objection"

certificate, that is to say a certificate that there is no objection to the location of the cinema at the site proposed by the applicant. The Rules contemplate the filing of objections by local residents. That is the stage at which opposition to the establishment of a cinema at the proposed site is specifically provided for. Any person opposing the establishment of a cinema at the proposed location must do so before a "no-objection" certificate is granted. The appellants did not file any objection at that stage "no-objection" certificate was granted to the third respondent. Thereafter, when the third respondent applied for a cinema licence, the appellants for the first time opposed the application. They opposed it on the ground that there was a mosque, a "madarsa" and a temple in the vicinity and that the cinema, if permitted, would constitute an obstruction and annoyance to the local residents. Inasmuch as those grounds were available to them during the proceedings for considering the grant of a "no-objection" certificate, and they did not file any objection, they cannot now be permitted to plead a right to oppose the grant of a cinema licence. Had they apposed the grant of the "no-objection"

certificate and their objection had made out a good case, it is possible that the "no-objection" certificate would have been refused, and in that event the applicant would not have applied for a cinema licence. on that short ground the appeal must fail.

That being so, I need not consider the further question whether in an appeal filed by an applicant, who has been refused a cinema licence, the local residents, who had objected to the grant of a "no-objection" certificate and had been over-ruled, can contest the claim of the applicant to a cinema licence. Rule 102 empowers the licensing authority to refuse a cinema licence if the cinema is likely to cause obstruction, inconvenience, annoyance, risk, danger or damage to residents, or passers by in the vicinity of the cinema. Rule 6 declares that the. grant of a "no-objection"

certificate is without prejudice to the right of the licensing authority to refuse a cinema licence under Rule

102. I leave the question open whether a person who has objected to the grant of a "no-objection" certificate when that grant was under consideration can subsequently oppose the grant of a cinema licence on the same grounds which he took against the "no-objection"

certificate.

The appellants not being entitled to challenge the grant of the cinema licence to the third respondent, I need express no opinion on the validity of that grant.

The appeal is dismissed but without any order as to costs.

N.V.K.

Appeal dismissed.