

Andhra High Court

Ankam Madhava Rao And Ors. vs The Andhra State Government, ... on 15 December, 1954

Equivalent citations: AIR 1955 AP 123

Bench: S Raju

ORDER (1) This is a petition under Art. 226 of the Constitution of India to call for the records and to issue a Writ of Certiorari quashing the Order of the Government of Andhra in G. O. R. No. 421 dated 12-8-1954.

(2) The facts which have given rise to this writ petition and which are either admitted or proved may be set out in their chronological sequence.

(3) The four petitioners in this Writ Petition and one B. M. Rao (3rd respondent) have been partners and lessees of a cinema theatre called Sri Kesari Picture. Eluru, under a registered lease deed, dated 9-11-1947, executed in their favour by the owner. The lease provides for a rent of Rs.550. per month and is to subsist for a period of ten years. The petitioners, B. M. Rao, (3rd respondent) and the owner of the theatre filed O. S. No. 2 of 1948 on the file of the District Court of West Godavari, for possession of the cinema theatre. There was a decree in their favour, which was confirmed by the High Court of Madras in A. S. No. 549 of 1948 Mad (A), on its file on 20-4-1949. In pursuance of that decree, possession was taken by all the partners. It is common ground that the licence under the Cinematograph Act and the licence under the Cinematograph Act and the licence under the Places of Public Resort Act were previously granted in the name of 3rd respondent. In or about February 1953, there were certain differences between the petitioners and 3rd respondent.

On an application filed by the petitioners, the licence under the Places of Public Resort Act as granted to the petitioners jointly with 3rd respondent. The licence under the Cinematograph Act issued in the name of 3rd respondent was to expire on 31-5-1953. Here it may be stated that a licence is granted for one year at a time and is renewable from year to year. The 3rd respondent did not apply for the renewal of the licence. the petitioners, however, applied on 29-5-1953 for the issue of a licence in the names of all the 5 partners, that is, the petitioners and 3rd respondent. To the petitioners' application for licence, 3rd respondent filed objections on 26-6-1953, wherein he stated that the licence should not be granted in the names of the five partners and prayed that the application for licence may be dismissed. The 2nd respondent in this petition is the District Magistrate of West Godavari, who is the licensing authority under the Cinematograph Act. He gave notice to the parties and heard their counsel. He passed an Order on 3-8-1953, which is as follows:

"The petitioners four in number and the respondent are the joint lessees of Sri Kesari Picture Palace, Eluru. The licence is in the name of the respondent who is the managing proprietor while the petitioners are actually running the cinema. Now that differences arose between the respondent and the petitioners, the petitioners request that their names also be included in the licence for the smooth running of the cinema. Their names have already been included in the Places of Public Resort Act licence issued by the Municipality. Since the petitioners are the joint lessees along with the respondent and since there are differences between them and the respondent regarding the management, it is desirable that the licence be issued in the names of all the partners in the interest of the smooth running of the cinema. There is nothing in the Act and the rules framed thereunder,

that licence should not be issued in the name of a body of individuals. The licence will, therefore, be granted in the name of all the five joint lessees."

(4) Pursuant to this Order a licence was granted jointly in the names of the four petitioners and 3rd respondent.

(5) The 3rd respondent filed a petition, dated 9-1-1954 before the government of Andhra (law Department) praying that the Order of the District Magistrate may be cancelled and that the 'status quo ante' may be restored in respect of the licence. The four petitioners filed petitions on 18-3-1954, 2-3-1954, and 1-4-1954 requesting the Government to dismiss the appeal petition filed by 3rd respondent. On 2-4-1954, the Government issued a memorandum that was parties would be heard in the presence of one another and the Collector of West Godavari was directed to issue notices to the parties to appear before the Law Secretary on 15-4-1954 at 11 A.M. On that day there was an attempt at an amicable settlement which eventually proved abortive.

(6) On 12-7-1954, the Government issued G. O. Ms. No. 734, which runs thus:

GOVERNMENT OF ANDHRA.

LAW (COURTS III) DEPARTMENT G. O. MS. No. 734 dated 12th July 1954.

.....

(Cinematograph Act -- Issue of licences to Cinema Theatres--instructions--issued):

ORDER: Cases have come to the notice of the government where Collectors have renewed the licences of the Cinema Houses in favour of persons, other than the original licencees or jointly with them without the consent of the latter, or without the applicants producing a document of transfer of title or of the licence in favour of the former by the latter. this does not seem to be reasonable and indirectly involves the Government in determining the proper rights of the rival claimants which is outside the scope of the licensing orders.

Collectors are, therefore, instructed not to renew a licence in the name of a person other than the original licensee except in the following cases:

(1) Where the applicant files a valid document of title or of transfer according to the tenor of the document;

(2) Where the applicant files a consent statement of the original licensee, according to the tenor of the consent; or (3) Where the applicant produces 'Prima Facie' proof that he is the legal successor in title of the original licensee; or an order of a Civil Court in his favour.

(4) Whenever there is transfer of title, along with the transfer, the transferee should obtain the consent in writing of the original licensee that the licensee will also be transferred in the name of the

transferee.

The Collectors are requested to follow the above instructions while granting licences under Cinematograph Act.

(2) The following Notification will be published in the Andhra Gazette.

NOTIFICATION In exercise of the powers conferred by S. 9(3) Cinematograph Act 1918 (Central Act II of 1918) the Governor of Andhra hereby makes the following amendment to the Madras Cinematograph rules, 1933, published with late Law (General Department Notification No. 73, dated 5-12-1933, at pages 193-198 of Part I of the fort St. George Gazette dated 30-1-1934, as subsequently amended.

AMENDMENT In the said Rules, after Rule11, the following rules shall be insertged, namely;

"11-A Whenever there is a transfer of title along with the transfer, the transferee should obtain consent in writing of the original should that the licence will also be transferred in the name of the transferee."

(6a) Notices were duly issued to the parties intimating that the Honourable Minister for Finance and Law would hear them and ultimately the parties were heard by the Minister on 7-8-1954. The Government passed G. O. R. No. 421 dated 12-8-1954. The said Order of the Government is as follows:

"The Order of the District Collector dated 3-8-1953 is set aside. The attention of the Collector of West Godavari is invited to G. O. Ms. No. 734, Law Department dated 12-7-1954 and he is requested to dispose of the above case according to the instructions contained in the Government Order.

(2) Sri B. Mallikharjuan Rao and Sri A. Madhva Rao and others are referred to the Collector of West Godavari for order on their petitions.

(By order of the Governor.) Sd. B. Ch. Narayanamurty.

Secretary to Government".

(7) The present Writ Petition was filed on 19-8-1954, for the issue of a Writ of Certiorari quashing the Order of the Government in the G. O. R. above reproduced.

(8) The contentions of the petitioners' learned counsel may be put under four heads:

(1) Rule 11-A which the Government have purported to make during the pendency of the appeal petition filed by 3rd respondent is 'ultra vires.' (2) Even if that rule were not 'ultra vires', it cannot have retrospective operation so as to affect the rights acquired by the petitioners under the Order of the licensing authority dated 3-8-1953.

(3) The Order of the Government setting aside the District Magistrate's order dated 3-8-1953, is illegal as being in excess of its powers.

(4) The Government have no power to issue instructions of the nature contained in G. O. Ms. No. 734 dated 12-7-1954.

(9) The learned Government Pleader Mr. Seshachallapathi appearing for respondents 1 and 2 contended that the Government Order of 12-7-1954, consists of two separate parts, the first part relating to the issue of instructions and the second, the draft rule; that the instructions fall within the ambit of S. 5(3), Cinematograph Act, 1918; that the said section confers a wide power on the Government to exercise control over the licensing authority and there is no warrant for circumscribing the ambit of the power of the Government; that the amplitude of the power which the Government can exercise under S. 5(3) is coterminous with the power of the licensing authority; that, in any view, the application is premature and that the petitioners cannot 'cry before they are hurt'.

(10) Mr. Hunikanaiah, appearing for 3rd respondent, supported the contentions which have been advanced on behalf of respondents 1 and 2.

(11) Before I proceed to consider the respective contentions of the parties, it is useful to set out the relevant provisions of the Cinematograph Act. The Cinematograph Act has been amended from time to time. Sections 2, 5 and 7 have been amended by Act 39 of 1949, and by Act 62 of 1949, Sections 1, 2, and 5 have again been amended and Sections 6 to 9 have been substituted. In this Judgment, reference is made to Cinematograph Act (Central Act II of 1918) as modified upto 1-1-1952.

(12) Section 4 defines licensing authority as "The authority having power to grant licences under this Act (hereinafter referred to as the 'licensing authority') shall be the District Magistrate, or in a Presidency town the Commissioner of Police:

Provided that the State Government may, by notification in the Official Gazette, constitute for the whole or any part of a State such other authority as it may specify in the notification to be the licensing authority for the purpose of this Act."

(13) Section 5(3) is in the following terms:

"Subject to the foregoing provisions of this section, and to the control of the State Government, the licensing authority may grant licences under this act to such persons as he thinks fit, and on such terms and conditions and subject to such restrictions as it may determine."

(14) Section 9(3) confers power on the State Government to make rules. It is in the following terms:

"The State Government may make rules to provide for the regulation of cinematograph exhibitions for securing the public safety."

(15) Section 9(4) reads thus:

"All rules made under this Act shall be published in the Official Gazette, and on such publication shall have effect as if enacted in this Act."

(16) A reference may also be made to R. 11, Cinematograph rules. It provides:

"Every application to the licensing authority for a licence under s. 3 of the Act shall be in writing and shall be accompanied by-

x x x x Every application for renewal of the licence shall be made one month before the expiry of the existing licence and a copy of every such application shall be sent simultaneously to the chief Electrical Inspector direct."

(17) Reference has also been made during the course of arguments to condition No. (7) of the 'Conditions of Licence' which are set out in form "A" of the Cinematograph Rules. It runs as follows:

The licensee shall not, without the permission of the licensing authority, assign, sub-let or otherwise transfer the licence or the licensed premises' nor shall the licensee without permission as aforesaid allow any other person during the period of currency of the licence to exhibit films in the licensed premises."

(18) Section 7, Madras General Clauses Act, contains the provisions regulating the making of rules after previous publication. The said section provides as follows:

"(a) the authority having power to make the rules shall, before making them, publish a draft of the proposed rules;

(b) the publication shall be made in such manner as that authority deems to be sufficient, or if the condition with respect to previous publication requires, in such manner as the Central Government or, as the case may be, the State Government prescribes:

(c) there shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration;

(d) the authority having power to make the rules, and where the rules are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules from any person with respect to the draft, before the date so specified;

(e) the publication in the Official Gazette of a rule purporting to have been made in exercise of a power to make rules after previous publication, shall be conclusive proof that the rule has been duly made."

(19) Having set out the relevant provisions of the Cinematograph Act and the provisions of S. 7, Madras General Clauses Act, I will now proceed to consider the validity of r. 11-A. That rule purports to have been framed in exercise of the power conferred on the State Government under S. 9(3), Cinematograph Act, 1918 (Central Act II of 1918). That section empowers the State Government to make rules to provide for the regulation of cinematograph exhibitions for securing the public safety. The object of the Cinematograph Act as stated in the preamble is to make provision for regulating exhibitions by means of cinematograph. It is, therefore, relevant to consider whether R. 11-A is within the intendment of S. 9(3), Cinematograph Act. The language of S. 9(3) is clear and explicit and it empowers the State Government to make rules only to provide for the regulation of the cinematograph exhibitions for securing the public safety. I am of the view that R. 11-A is neither within the intendment of s. 9(3) nor within the object of the Act as stated in the preamble. Apart from this, the notification inserting the new rule was published in the Andhra Gazette on 9-9-1954. Before 9-9-1954, there was no publication of the draft rule as per the requirements of S. 7, Madras General Clauses Act. Objections or suggestions in respect of the draft rule were not admittedly invited at any time and the rule was for the first time published on 9-9-1954. The rule not being within the scope and intendment of S. 9(3) which empowers the State Government to make rules, and the mandatory provisions of S. 7, Madras General Clauses Act, which requires previous publication and the inviting of objections to the draft rule, not having been followed, I hold that the rule is 'ultra vires' the powers of the State Government and has not been validly made. This position has not been seriously contested before me.

(20) If Rs. 11-A is not valid as a statutory rule, the question as to whether it can retrospectively affect vested rights need not be considered. If a rule is bad as a statutory rule, there can be no question of either its prospective or retrospective operation.

(21) The more important question, however, is even if this rule were not followed, whether the instructions contained in the first part of the Government Order are valid and fall within the ambit of s. 5(3), Cinematograph Act, and whether they can validate the order of the Government setting aside the grants of the licence by the District Magistrate to the petitioners and to 3rd respondent. That the Government have the power to issue instructions under s. 5(3), Cinematograph Act, is beyond controversy. In -- 'Vallinayagam Pillai v. State of Madras', (B), Rajamannar /c. J. and Venkatarama Ayyar J., laid down that "Unless S. 5(3), Cinematograph Act, wide power is conferred on the licensing authority to grant licences to such persons as it thinks fit and on such terms and conditions subject to such restrictions as it may determine. The licensing authority is subject to the control of the Provincial Government. It is presumably in exercise of this power of control that the instructions were issued by the Government to the licensing authorities. It is not strictly accurate to speak of these instructions as rules framed under s. 8 of the Act and so it is not necessary to deal with the contention that they go beyond the rule-making power contained in S. 8".

(22) I am in agreement with the contention of the learned Government Pleader that the expression 'subject to the control of the State Government' is wide enough to empower the Government to issue appropriate instructions to the licensing authority.

(23) But the question still remains as to whether it is within the competence of the State Government to issue an executive instruction which if it were issued as a statutory rule would be beyond their rule-making power contained in S. 9(3). The petitioners' learned counsel contended that the instruction is merely a crystalized form of the rule and has merged with the rule. On a fair reading of the Government Order, I have found it very difficult to separate the instruction from the rule. In my opinion, the instruction and the rule are integral and one cannot be separated from the other. In any view I hold that the rule itself being beyond the rule-making power of the State Government, it would not be within the competence of the State Government to issue a rule in the shape of an instruction or direction. If it were the view of the State Government that it should serve as an instruction and there was no necessity to frame a rule, the Government need not have framed the rule. On the other hand, if the Government thought that they must frame a rule, I am not satisfied that they could issue it in the form of an instruction. therefore, what cannot be good as a statutory rule may not be good as a direction or instruction purporting to have been issued under S. 5(3).

I am aware that the amplitude of the power conferred on the State Government under S. 5 (3) is wider than the rule-making power conferred on the State Government under S. 9(3) of the Act. But, to my mind, whether it is a rule or an instruction, it must be within the intendment and object of the Act as set out in the preamble and in the material provisions of the Act. The object of the Act, as stated in the preamble, is to make provision for regulating exhibitions by means of cinematographs and the power to control to be exercised by the State Government under S. 5(3) must be correlated to the purposes of the Act. When during the course of the arguments, I put this to the learned Government Pleader, he pointed out Condition No. 7 of the Conditions of Licence', which I have extracted above, as justifying the issuing of an executive instruction contained in the impugned Government Order. I am not now called upon to express my opinion as to the validity of the condition inserted in the licence (Form A). But I am satisfied that an executive instruction, which is unrelated to the object, intendment or the purpose of the Act, cannot be issued by the State Government.

(24) There is another important aspect of the matter which requires consideration. It must be remembered that the previous licence in favour of 3rd respondent expired on 31-5-1953. The 3rd respondent did not himself apply for a renewal of the licence. He preferred to keep quiet. It was the petitioners that applied for the renewal on 29-5-1953, and the licence was granted by the District Magistrate of West Godavari in favour of the petitioners and 3rd respondent for the reasons recorded by him in his order. On the date on which the District Magistrate granted the licence in favour of the petitioners there was admittedly no rule or executive instruction or order of the nature contained in the Government Order, dated 12-7-1954. In the absence of the rule or the executive instruction, it was within the competence of the District Magistrate to issue the licence in favour of the petitioners. Can it be that the executive instruction subsequently issued operates to make the order of the District Magistrate bad? Long before 12-7-1954, the petitioners had a valid licence in their favour. Can that licence be cancelled in the light of instructions subsequently issued? I am not satisfied that a licence validly issued can be cancelled because of the fact that the Government choose to issue instruction at a later date.

(25) The learned counsel for the petitioners has further contended that, in any view, the Government had no power to cancel a licence issued by the licensing authority and in support of this contention he relied upon the decision of the Supreme Court in -- 'Commr. of Police, Bombay v. Gordhandas Bhanji', (B). Their Lordships of the Supreme Court held that there was no valid cancellation of the licence because the Order of cancellation communicated to the respondent was one made by the Government of Bombay and not by the Commissioner on his own authority, he having acted only as a transmitting agent. This decision turned upon the construction of the rules framed under Ss. 22 (1) (f), 1(g) and (n), City of Bombay Police Act, 1902. The Supreme Court held on a perusal of the relevant rules that the only person vested with the authority to grant or refuse a licence for the erection of a building to be used for purposes of public amusement is the Commissioner of Police, that under R. 250 he has been vested with the absolute discretion 'at any time' to cancel or suspend any licence which has been granted under the rules, but the power to do so is vested in him and not in the State Government and can only be exercised by him at 'his' discretion and that no other person or authority can do it. This decision, as I said before, turned upon a construction of the rule framed under the City of Bombay Police Act and does not, therefore, apply to the present case. About the general power of the Government to cancel a licence issued by the District Magistrate, I would prefer not to express a final opinion in this case as I had not the advantage of a full and exhaustive argument on this question.

(26) Lastly, there remains the objection taken by the learned Government Pleader that the petitioners are not entitled to any relief in this Writ Petition because it is premature. This contention is based on the language of the Order of the Government, dated 12-8-1954 given above.

From the statement of facts set out above, it is clear that the Government did purport to cancel the Order of the District Magistrate issuing the licence to the petitioners. That Order of the District Magistrate was specifically set aside by the Government. The contention on behalf of the respondents is that the Government have merely directed the District Magistrate to dispose of the case in accordance with the instructions contained in the Government Order. The first paragraph of the order in which the Government purported to set aside the Order of the District Magistrate, dated 3-8-1953, was no doubt communicated to the petitioners. But the order of the Government specifically set aside the Order of the District Magistrate dated 3-8-1953. It cannot, therefore, be contended with reason that the petitioners should be denied relief in this Writ Petition on the ground that their application under Art. 226 is premature. What they complain of and what they seek to quash is the Order of the Government in G. O. R. No. 421, dated 12-8-1954. All the parties to the Writ Petition have concentrated their attention on the correctness of the said Order of the Government. The petitioners are certainly hurt by the said Order of the Government, and it cannot be said that their petition is premature.

(27) In the view I have taken, it follows that the Order of the Government in G. O. R. No. 421, dated 12-8-1954 must be quashed. The petitioners will have their costs which I fix at Rs.200/-.

Order quashed.