

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 4425/2007 & CM APPL No. 8269/2007

JAGAT TALKIES DISTRIBUTORS Petitioner

Through: Mr. Harish Malhotra, Sr. Advocate
with Mr. R.K. Modi, Mr. Tanuj Khurana and
Mr. Vipul Gupta, Advocates.

versus

DY. COMMISSIONER OF POLICE & ANR Respondent

Through: Mr. N. Waziri, Standing Counsel
with Mr. Shoaib Haider, Advocate.

CORAM: JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the order? No
2. To be referred to the Reporter or not? Yes
3. Whether the order should be reported in Digest? Yes

ORDER
07.04.2010

1. The Petitioner Jagat Talkies Distributors is aggrieved by the impugned order dated 7th February 2005 passed by the Deputy Commissioner of Police (Licensing), Delhi revoking the Cinematography licence issued to it, order of the Lieutenant Governor, Govt. of NCT of Delhi dated 28th April 2005 in appeal suspending the licence, and a subsequent order dated 22nd May 2007 of the DCP (Licensing), Delhi rejecting the renewal application of the Petitioner on the ground that an FIR had been registered against it.

2. The impugned order of 7th February 2005 states that on the complaint of one Shri S. Abhinandan Reddy and Shri Kailash Joshi of

M/s Knight Watch Security Limited, a raid was conducted on 6th September 2004 by the authorized agent of Central Board of Film Certification ('CBFC'), Ministry of Information and Broadcasting, New Delhi in the Jagat Cinema Hall situated in the area of Jama Masjid, Delhi. At that time, the film "Korean Ki Laila" was being screened. The film began at 4 pm. The raiding party bought tickets and watched the film up to 5.45 pm. It found that a pornographic film was being shown in the picture hall in the guise of the regular film "Korean Kil Laila". On the basis of said complaint from Shri Kailash Joshi on the spot, an FIR No. 116 dated 6th September 2004 under Section 7(i)(c) of the Cinematograph Act, 1952 ('Act') was registered at Police Station Special Cell, New Delhi. Three persons, namely Bal Kishan Malhotra working as Manager of Jagat Cinema, Pramod Kumar and Kuldeep working as Projector Operators, were arrested. It is stated that 19 film rolls of 'Korean Ki Laila', a photostat copy of the certificate issued by CBFC, counterfoils of sold tickets, the duty roster of the Jagat Cinema employees were also seized by the raiding party.

3. On 17th September 2004, the DCP (Licensing) issued a show cause notice to the Petitioner pointing out that the above facts constituted violations of the conditions of the Cinematograph Licence granted on Form 'A' under Section 10 of the Act which prohibited the licensee from exhibiting any film "other than a film which has been certified for public exhibition". The Petitioner was asked to show cause within

15 days as to why licence granted to it should not be revoked.

4. The order proceeds to narrate that seized prints of the film which was shown in Jagat Cinema Hall on 6th September 2004 and were verified by the CBFC on 6th October 2004 in the presence of one Advisory Panel and the Regional Officer, CBFC and the Sub-Inspector of Special Cell of Delhi Police. It is found that the seized prints contained “insertion of several objectionable visuals of highly erotic sexual acts,” which are not available in the video copy of the film certified by the CBFC, Mumbai. A reference has been made to Rule 3(8) of the Delhi Cinematograph Rules, 2002 (‘DCR’) in terms of which the licensee shall be responsible for “all acts and omissions of his Managers, servants or agents, which are committed or made with his knowledge or consent arising out or in connection with the cinema to which licence relates”.

5. The reply dated 4th October 2004 submitted by the Petitioner did not deny the screening of the pornographic film. It was contended that the licencing authority has exercised powers under Rule 8 DCR wrongly and that the licence cannot be suspended for an indefinite period of time on the ground that an FIR had been registered. Another application dated 31st January 2005 was submitted by the Petitioner wherein it was stated that some of the staff were being suspended for acting without his consent and knowledge and without any permission from him. He has, accordingly, initiated disciplinary action against

them.

6. The order noted that on 3rd February 2005, the proprietor of the Petitioner was called for personal hearing during which “he admitted that the Manager of the cinema hall was exhibiting pornographic film, but without his knowledge.” He further said that he had seen the report of the CBFC in the court, which established wrongful acts committed in the cinema hall. Finally, he pleaded in the court “to reopen the cinema hall taking a lenient view, as he has already initiated disciplinary action against the defaulters.”

7. At this stage, it must be mentioned that the Petitioner had earlier filed Writ Petition (Civil) No.16417-18 of 2004 in this Court against the show-cause notice dated 17th September, 2004. The said petition was disposed of by this Court on 25th January 2005, whereby the DCP (Licensing) was directed to dispose of the proceedings both in respect of suspension and revocation. Thereafter, a personal hearing was granted to the Petitioner.

8. After the order dated 7th February 2005 was passed by the DCP (Licensing), the Petitioner challenged it by filing Writ Petition (Civil) No. 3384-85 of 2005 in this Court. This was disposed of on 28th February, 2005 with liberty to approach the Appellate Authority. Consequently, the Petitioner filed an appeal before the Lieutenant Governor (LG) under Rule 13 DCR. By an order dated 28th April

2005 the LG dismissed the appeal converting the revocation into a suspension.

9. The LG's order dated 28th April 2005 was challenged by the Petitioner in Writ Petition (Civil) No. 8852 of 2005. This petition was disposed on 26th April, 2007 directing the Respondent to deal with the application of the Petitioner for renewal of the licence and to take the decision thereon within four weeks.

10. Thereafter the Petitioner wrote to the DCP (Licensing) on 12th May, 2007 requesting for renewal of its licence. On 22nd May 2007 the DCP passed an order rejecting the renewal application on the ground that an F.I.R. had been registered. This led to the Petitioner filing a further application CM No. 7973 of 2007 in W.P. (Civil) No. 8852 of 2005 for revival of the said petition. This Court, however, observed that the Petitioner should file a substantive writ petition challenging the order dated 22nd May, 2007. Consequently, the application was dismissed as not pressed. That is how the present writ petition has been filed.

11. Mr. Harish Malhotra, learned Senior counsel appearing on behalf of the Petitioner submitted that there is no provision under the Act or the DCR permitting the Respondent to revoke the licence merely on the registration of an FIR. Unless the holder of licence has been convicted under Section 7 and 14 of the Act, the power under Section

15 of the Act to revoke the licence cannot be exercised by the Licensing Authority. Under Rule 8 DCR the Licensing Authority has been given the power to revoke or suspend the licence for any breach of the rules or of the condition of the licence or for any other reasons. It is submitted that the DCR cannot exceed the scope of the Act. Inasmuch as Section 15 of the Act permits revocation of a licence only upon a conviction of the licence holder under Sections 7 or 14 of the Act, the power under Rule 8 DCR permitting revocation for the breach of the conditions of the licence was ultra vires the power granted under the Act. Counsel for the petitioner refers to the decisions in *Babaji Kondaji Garad v. Nasik Merchants Cooperative Bank Limited AIR 1984 SC 192*, *Tahir Hussain v. District Board, Muzaffarnagar AIR 1954 SC 630* and *Hukum Chand v. Union of India AIR 1972 SC 2427*.

12. In reply, it is submitted on behalf of the Respondent that on account of the criminal case pending in the trial court and in view of the breach of condition No. 11 of the Cinematograph Licence and the verification report, it was found not proper to renew the licence granted to Jagat Cinema. In the criminal case, charges had been framed on 25th April, 2007 against four accused persons and the case was fixed for prosecution evidence. The licence of the Petitioner had expired in 2002 and before it could be renewed, the suspension took place. It is submitted that the cinema was continuing on a temporary

licence from 19th February, 2002 till 17th February, 2004. It is stated that till the trial concludes, no decision can be taken to revoke the suspension.

13. This Court has considered the above submissions.

14. It is not in dispute that the trial in FIR No. 116 of 2004 under Section 7 (i) (c) of the Act, Section 292 IPC and Section 3 of Indecent Representation of Women (P) Act is pending. Sections 7, 8 and 15 of the Act which are relevant for the purpose are read as under:

“Section 7 - Penalties for contraventions of this Part

(1) If any person--

(a) exhibits or permits to be exhibited in any place--

(i) any film other than a film which has been certified by the board as suitable for unrestricted public exhibition or for public exhibition restricted to adults or to members of any profession or any class of persons and which, when exhibited, displays the prescribed mark of the Board and has not been altered or tampered with in any way since such mark was affixed thereto,

(ii) any film, which has been certified by the Board as suitable for public exhibition restricted to adults, to any person who is not an adult,

(iia) any film which has been certified by the Board as suitable for public exhibition restricted to any profession or class of persons, to a person who is not a member of such profession or who is not a member of such class, or

(b) without lawful authority (the burden of proving which shall be on him), alters or tampers with in any way any film after it has been certified, or

(c) fails to comply with the provision contained in section 6A or with any order made by the Central Government or by the Board in the exercise of any of the powers or

functions conferred on it by this Act or the rules made thereunder,

he shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to one lakh rupees, or with both, and in the case of a continuing offence with a further fine which may extend to twenty thousand rupees for each day during which the offence continues:

Provided that a person who exhibits or permits to be exhibited in any place a video film in contravention of the provisions of sub-clause (i) of clause (a) shall be punishable with imprisonment for a term which shall not be less than three months, but which may extend to three years and with fine which shall not be less than twenty thousand rupees, but which may extend to one lakh rupees, and in the case of a continuing offence with a further fine which may extend to twenty thousand rupees for each day during which the offence continues:

Provided further that a court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months, or a fine of less than twenty thousand rupees]:

Provided further that notwithstanding anything contained in Section 29 of the Code of Criminal Procedure, 1973 (2 of 1974), it shall be lawful for any Metropolitan Magistrate, or any Judicial Magistrate of the first class specially empowered by the State Government in this behalf, to pass a sentence of fine exceeding five thousand rupees on any person convicted of any offence punishable under this Part:

Provided also that no distributor or exhibitor or owner or employee of a cinema house shall be liable to punishment for contravention of any condition of endorsement of caution on a film certified as "UA" under this Part.

(2) If any person is convicted of an offence punishable under this section committed by him in respect of any film, the convicting court may further direct that the film shall be forfeited to the Government.

(3) The exhibition of a film, in respect of which an "A" certificate or a "S" certificate or a "UA" certificate has been granted, to children below the age of three years accompanying their parents or guardians shall not be

deemed to be an offence within the meaning of this section

Section 8 - Power to make rules

(1) The Central Government may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the provisions of this Part.

(2) In particular, and without prejudice to the generality of the foregoing power, rules made under this section may provide for--

(a) the allowances or fees payable to the members of the Board;

(b) the terms and conditions of service of the members of the Board;

(c) the manner of making an application to the Board for a certificate and the manner in which a film has to be examined by the Board and the fees to be levied therefore;

(d) the association of regional officers in the examination of films, the conditions and restrictions subject to which regional officers may be authorised under section 7B to issue provisional certificates and the period of validity of such certificates;

(e) the manner in which the Board may consult any advisory panel in respect of any film;

(f) the allowances or fees payable to the members of advisory panel;

(g) the marking of the films;

(h) the allowances or fees payable to the members of the Tribunal;

(i) the powers and duties of the Secretary to, and other employees of, the Tribunal;

(j) the other terms and conditions of service of the Chairman and members of, and the Secretary to, and other employees of, the Tribunal;

(k) the fees payable by the appellant to the Tribunal in respect of an appeal;

(l) the conditions (including conditions relating to the length of films in general or any class of films, in

particular) subject to which any certificate may be granted, or the circumstances in which any certificate shall be refused;

(m) any other matter which is required to be or may be prescribed.

(3) Every rule made by the Central Government under this Part shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall, thereafter, have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Section 15 - Power to revoke licence

Where the holder of a licence has been convicted of an offence under section 7 or section 14, the licence may be revoked by the licensing authority.”

15. It is clear, therefore, that in terms of the Act the revocation can take place only where there is a conviction of licence holder in terms of Sections 7 and 8 of the Act and not otherwise. In the present case, if one were to go by Section 15 of the Act then the power to revoke the licence cannot be exercised, since the petitioner is yet to be convicted for the above offences. It may be mentioned here that the Petitioner No. 1 is a partnership firm and is itself is not named as an accused in the FIR or in the charge sheet. It remains to be seen whether it is the prosecution’s case and whether it is able to show that Petitioner No. 2 Vijay Narain Seth, the Managing Partner of Petitioner

No.1 was aware of the acts committed by the Manager.

16. It is seen that while deciding the appeal of the petitioner on 28th April, 2005 the LG passed the following order:

“On careful consideration of the material before me, I find that there is substantial and credible material to hold that a case of violation of licensing condition No. 11 is made out. The responsibility statutorily vested in the Deputy Commissioner of Police (Licensing) would demand that he should take appropriate action against such violation, in the public interest. I find that the action is justified and legally valid. However, considering the fact that a criminal case has also been registered, which is yet to be decided. I think it would be appropriate to modify the order of revocation of the license to that of suspension of the licence till FIR No. 116/2004, PS Special Cell, registered in the matter, is decided by the trial court. On receipt of the decision in the case, respondent No. 1 will be free to take a view in accordance with the provisions of law. The impugned order stands accordingly modified. The instant appeal without merit and is hereby dismissed.

17. Thereafter, pursuant to the order passed by this Court, DCP (Licensing) on 8th May, 2007 passed an order rejecting the application for renewal of the licence. The short question that arises is whether there can be an indefinite suspension of the Petitioner's licence to await the outcome of the criminal trial. The second is whether there can be a revocation of the licence of the Petitioner. It should be

noticed at once in revoking the licence of the Petitioner resort had been by the Respondent to Rule 8 of the Rules, which reads as under:-

“8. Revocation or suspension of licence

The licensing authority may, at any time, revoke or suspend a licence granted by him for any breach of these rules or of the conditions of the licence or for any other reasons recorded by him in writing.”

18. The learned Senior counsel for the Petitioner is right in his contention that the scope of the DCR cannot exceed the powers granted under the Act. Rule 8 vests, in the Licensing Authority, a power to revoke or suspend the licence for breach of the rules and of the conditions of the licence or for reasons recorded in writing. This is far greater than what is permissible under Section 15 of the Act. In *Babaji Kondaji Garad*, the Supreme Court was considering the interpretation of Section 73 (B) of the Maharashtra Cooperative Societies Act, 1960 (‘Act’) which provided for reservation of seats in the Board of Directors in favour of Scheduled Castes, Scheduled Tribes and weaker sections. The Nasik Merchants Co-operative Bank Ltd., however, did not amend the by-laws to bring them in conformity with the Section 73 (B) of the Act. In the context of election of members to the reserved seats, it was contended on behalf of the Petitioners that the procedure of counting votes was governed by Rule 61 of the Maharashtra Specified Co-operative Societies Elections to Committee (Amendment) Rules, 1979 and that since the amended by-laws, particularly By-Law No. 40, did not make any provision for

election to the reserved seats, no election would take place of reserved candidates. The Supreme Court negated this contention holding that Rule 61 was only a subordinate legislation. It further explained that “if there is any conflict between a statute and the subordinate legislation, it does not require elaborate reasoning to firmly state that the statute prevails over subordinate legislation and the bye-law, if not in conformity with the statute. In order to give effect to the statutory provision, the rule or bye-law has to be ignored. The statutory provision has precedence and must be complied with”.

19. In *Hukum Chand Vs. Union of India*, the Supreme Court was interpreting Section 40 of the Displaced Persons (Compensation and Rehabilitation), Act 1954. The question was further whether rules thereunder could be given retrospective effect in the absence of any expressed power in that regard. It was explained that the difference between subordinate legislation and the statute laws lies in the fact that “a subordinate law making body is bound by the terms of its delegated or derived authority”. It is explained that Rules could not be *ultra vires* the Act itself.

20. In *Tahir Hussain* the Supreme Court was interpreting the Section 174 (2) (1) of the United Provinces District Board Act, 1922 and the validity of bye-laws made under Section 172 (2) (1) which prohibited the holding of markets. It was held that the Act itself was one for

regulating markets and, therefore a bye-law which is framed to the effect that no person shall establish or maintain or run any cattle market, was not a bye-law for regulating the market but for prohibiting a person from holding it. Consequently, it was held that the bye-law was far beyond the scope of the Act itself and, therefore was untenable.

21. This court, therefore has no hesitation in coming to the conclusion that Rule 8 DCR, insofar as it vests in the DCP (Licensing) a power far in excess of the power under Section 15 of the Act is *ultra vires* the Act. If Rule 8 DCR has to be saved from invalidity, it will have to be interpreted to mean that in exercise of the power under Rule 8, the licence of a cinema hall cannot be revoked unless the licence holder suffers a conviction for an offence as required by Section 15 of the Act.

22. Consequently, the order passed by the LG on 28th April 2005 and the subsequent order of the DCP (Licensing) dated 22nd May 2007 are hereby set aside. The Respondent Licencing Authority is directed to renew the licence of the Petitioner forthwith. However, it will be open to the Respondent to incorporate appropriate preventive and precautionary conditions in the licence and require the petitioner to furnish an undertaking that in the event it is found that any of the conditions of the licence is breached, the licence is liable to be

suspended in accordance with law.

23. With the above directions, the petition and the pending application are disposed of.

S. MURALIDHAR, J

APRIL 7, 2010

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