

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.19587 of 2018

ORDER:

In the present writ petition, challenge is to the order passed by the Commissioner of Police and Licensing Authority, Cyberabad, Hyderabad/the second respondent herein vide proceedings Rc.No.01/M7/Cine/Cyb/2015 dated 23.05.2018.

2. Heard the learned counsel for the petitioner and the learned Government Pleader for Home for the respondents.

3. According to the petitioner, it was constructed in the year 1983-84 and Form-B license was granted by the licensing authority for running the theatre with single screen. It is further stated that in the year 2015, petitioner theatre was closed for renovation and on 07.09.2015 petitioner made an application for grant of NOC for construction of four screens under Rule 8-A of the A.P. Cinemas (Regulation) Rules, 1970; that after waiting for the statutory period, petitioner herein made application under Rule 9-A for grant of permission to construct cinema building, but the authorities did not pass any orders; that the petitioner herein completed the construction under deemed clause and altered the theatre as four screens theatre and thereafter on 21.12.2017 petitioner made application to the second respondent under Rule 9-B for grant of Form-B license for running four screens cinema theatre. Thereafter, questioning the action of the respondents in not granting permission to screen the films in Form-B and for a consequential direction to the licensing authority to inspect the petitioner theatre, petitioner herein filed W.P.No.2417 of 2018; this Court vide order dated 27.02.2018 disposed of the said W.P.No.2417 of 2018, directing the respondents to process the application of the petitioner and

take appropriate action, strictly in accordance with the A.P. Cinematograph Act, 1952 and the A.P. Cinemas (Regulation) Rules, 1970 and to pass appropriate orders, within a period of two months from the date of receipt of the order. Thereafter, the Assistant Commissioner of Police, Miyapur Division, Cyberabad, vide notice No.194/ACP/MYP-DIV/CYB/2018, dated 07.05.2018, asked the petitioner to submit a copy of the Typical floor plan/Building plan of the petitioner theatre at the time of obtaining Form-B license on 03.05.1984 within 3 days after receipt of the said notice. In response to the said notice, petitioner herein submitted a reply dated 14.05.2018 in the following manner:

“To,

The Assistant Commissioner of Police,  
Miyapur L & O Division,  
Cyberabad,

Dear Sir,

Sub: Reply to the notice No. 194/ACP/MYP-DIV/CYB/2018 dated 7.05.2018 received on 11.05.2018.

Sir, this has reference to the above mentioned subject we have received a notice on 11.05.2018 from your office to submit the typical floor plan /building plan of the licensed Geeta theatre which was approved in 1984 in 3 days. Sir, we have searched every corner and we did not find a copy of the same, however when we have applied for the construction permission in September 2015 we have submitted all the required documents and plans to the Police Commissioner Cyberabad. Request you Sir, to please call for the plan from the concerned section of the Commissioner's Office, also request you Sir, to refer to Section 6 and rule 10 of the A.P. Cinema Regulation act and Rules, as per the said rules for internal construction of an existing cinema building and new construction of cinema building the rules are the same.

Sir, we would also like to get the fact to your kind notice that the Honourable High Court has given directions to C.R. Cyberabad to process our application dated 21.12.2017 as per rule 118 of the A.P. Cinemas regulations and rules. Request you to refer rule 11B of the said act and rules Sir, as per the said act & rules to process the application under rule 11B the office of C.P. Cyberabad has to send proceedings to Fire, R&B, Medical & Health and Electrical departments only and not to any other department to inspect and send their reports, so that the application process is completed, but till date none of the above mentioned departments have received any kind of proceedings from the office of C.P. Cyberabad for inspection.

Sir, we would also like to get another fact to your kind notice that C.P. Cyberabad has formed a committee to process our case as per rule 9B and as per the directions of Honourable High Court to process our application under rule 11B of the above mentioned act and rules. Request you to refer rule 9B of the said act and rules Sir, as per rule 9B the office of the C.P. Cyberabad has to send proceedings to R&B, Electrical and Medical & Health departments only and not to any other department to inspect the site and give their reports. Sir, this process has been completed and all the above mentioned departments reports have been submitted to the office of C.P. Cyberabad with their recommendations and same has been confirmed by the office of C.P. Cyberabad in the counter affidavit filed against us in WP No. 2417 of 2018. As per the above reports we should get the permission under rule 98. The C.P. Cyberabad has also asked the committee to process the application under rule 11B as per the directions given by the Honourable High Court, the process for the same has been explained in para no 2 of this reply letter. Sir, all the required plans, reports and documents of Geeta Theatre have been submitted to the office of C.P. Cyberabad and only after that the process has started, request you to call for the required documents from the concerned section.

Request you Sir, to please give us an acknowledgement for this letter.

Regards,

Sd/-  
K.Sudershan Reddy"

4. Thereafter, the second respondent/Licensing authority passed the impugned order dated 23.05.2018 vide proceedings Rc.No.01/M7/Cine/Cyb/2015 stating that the applications filed by the petitioner are not in accordance with the A.P. Cinemas (Regulation) Rules, 1970 and advised the petitioner to file application afresh. On 25.05.2018, after receipt of the impugned order, petitioner herein submitted a representation to reconsider the issue. Alleging inaction, this writ petition came to be filed on 12.06.2018.

5. Along with the counter affidavit a Memo bearing Lr.No.01M7/Cine/Cyb/2015, dated 06.06.2018 is filed, directing the petitioner herein to resubmit the application as indicated earlier. According to the learned counsel for the petitioner, the impugned action on the part of the second respondent licensing authority is highly illegal, arbitrary,

unreasonable and violative of Articles 14 and 19 (1) (g) of the Constitution of India. It is further submitted by the learned counsel that the second respondent passed the impugned order not in consonance with the orders of this Court in W.P.No.2417 of 2018 and issued the impugned order only to avoid the action for disobedience of the orders.

6. On the other hand, it is submitted by the learned Government Pleader reiterating the contents of the counter affidavit that there is no illegality nor there exists any infirmity in the impugned action and in the absence of the same, the impugned action is not amenable for judicial review under Article 226 of the Constitution of India.

7. It is required to be noted that previously assailing the inaction on the part of the respondent authorities in granting permission to screen the films in B-Form, W.P.No.2417 of 2018 came to be filed by the petitioner herein. This Court, as observed supra, disposed of the said writ petition by way of an order dated 27.02.2018 and the operative portion of the said order reads as under:

“8. On the other hand, Rule 8-B of the A.P. Cinemas (Regulation) Rules, 1970 obligates the licensing authority to forward as copy of the application together with its enclosures to various authorities including the Chief Executive Officer of the Local Authority. The second proviso to Rule 8-B(2) stipulates that if the Licensing Authority fails to send reply to the applicant either granting or rejecting the "No Objection Certificate" applied for, within a period of 45 days, the NOC is deemed to have been granted provided the proposal is in conformity with the Act and the Rules made thereunder. Since the police authorities have already recommended for grant of NOC to the petitioner herein earlier, this court does not find any justification on the part of the respondents-authorities.

For the aforesaid reasons, the writ petition stands disposed of, directing the respondents to process the application of the petitioner herein and take appropriate action strictly in accordance with the A.P. Cinematograph Act, 1952 and the A.P. Cinemas (Regulation) Rules, 1970 and also pass appropriate orders within a period of two months from the date of receipt of a copy of this order. No order as to costs. Miscellaneous Petitions pending, if any, shall stand closed.”

8. It is also significant to note that when the Assistant Commissioner of Police, Miyapur Division, Cyberabad issued a notice bearing No. 194/ACP/MYP-DIV/CYB/2018, dated 07.05.2018, asking the petitioner to submit the copy of the Typical Floor plan/Building plan of the petitioner at the time of obtaining Form-B license on 03.05.1984, the petitioner herein submitted an elaborate reply dated 14.05.2018 as extracted *supra*.

9. Without considering the said reply dated 14.05.2018 and without even referring to the same, the licensing authority/second respondent herein issued the impugned order, stating that the matter has been enquired into while informing that the application filed by the petitioner herein are not in accordance with A.P. Cinemas (Regulation) Rules, 1970 and while advising the petitioner to file application afresh as per A.P. Cinemas (Regulation) Rules, 1970. It is also required to be noted that after receipt of the impugned order dated 23.05.2018, petitioner herein submitted a representation on 25.05.2018 for reconsideration of the issue, while categorically bringing it to the notice of the second respondent about legal position. But vide Memo dated 06.06.2018, the second respondent herein reiterated the earlier stand.

10. A perusal of the impugned proceedings clearly discloses that the second respondent did not assign any reasons nor he undertook any exercise in the direction of considering the replies submitted by the petitioner herein so also the representation for reconsideration. In the considered opinion of this Court, the matter requires reconsideration by the second respondent herein.

11. For the aforesaid reasons, the writ petition is allowed, setting aside the proceedings Rc.No.01/M7/Cine/Cyb/2015, dated 23.05.2018 of the Commissioner of Police and Licensing Authority, Cyberabad, Hyderabad/the

second respondent herein and the second respondent herein shall take action strictly in accordance with law and pass appropriate orders, after considering the reply dated 14.05.2018 submitted by the petitioner herein in response to the notice of the Assistant Commissioner of Police, Miyapur Division dated 07.01.2018 and the representation dated 25.05.2018 submitted by the petitioner herein after receipt of the impugned notice and consider the application of the petitioner for grant of Form-B License in accordance with law. As a sequel, the miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs

Date:28.12.2018  
grk

A.V.SESHA SAI, J





THE HON'BLE SRI JUSTICE A.V.SESHA SAI



W.P.No.19587 of 2018

Dated:28.12.2018

grk

