

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPA No. 8580 of 2020

**Amrita Singh
Vs.**

The State of West Bengal and others

For the petitioner	:	Mr. Saptansu Basu, Mr. Nabankur Paul, Mr. Md. Apzal Ansari.
For the State	:	Mr. Subir Kumar Saha, Mr. Bikramaditya Ghosh.
For the private respondent no. 4	:	Mr. Surajit Nath Mitra, Mr. Debajyoti Basu, Mr. Onkar Ganguly, Ms. Reshmi Mukherjee.
Hearing concluded on	:	07.01.2021
Judgment on	:	12.01.2021

Sabyasachi Bhattacharyya, J:-

1. The petitioner has challenged an order dated September 25, 2020 passed by the Commissioner, Jalpaiguri Division, Jalpaiguri, acting as appellate authority under Section 5(4) of the West Bengal Cinemas (Regulation) Act, 1954 (hereinafter referred to as “the 1954 Act”).
2. One Ramindra Singh (since deceased) was the owner of a cinema hall known as “Payel Theatres”. Upon his demise, the petitioner (who is the daughter of late Ramindra Singh by his second wife), applied on January 13, 2016 for transfer of the licence in the name of her mother Smt. Tara Devi Singh and her younger brother Jasminder Singh jointly. On such application, the licensing authority, that is, the Additional

District Magistrate (G) at Jalpaiguri, issued a provisional licence on June 20, 2018 in favour of the petitioner herself for running the said cinema hall temporarily for a period of 90 days from the date of the order, on fulfilment of the conditions as stipulated in the said order granting licence.

3. The petitioner challenged such grant of provisional licence, asking for permanent licence, before the Commissioner, Jalpaiguri Division, in an appeal bearing Case No. Misc./01/LMR/2018. The Commissioner, in the capacity of appellate authority under the 1954 Act, disposed of the said appeal vide Order No. 4 dated December 11, 2018, observing that neither the petitioner nor the contestant in the said appeal, namely, Smt. Satminder Kaur (respondent no. 4 herein) had been able to produce any succession certificate. However, the appellate authority affirmed the order of the Additional District Magistrate (G), Jalpaiguri granting provisional licence in favour of the petitioner.
4. Subsequently, respondent no. 4 (the first wife of late Ramindra) took out an application for grant of permanent licence in her favour on August 19, 2020, before the Divisional Commissioner, Jalpaiguri, that is, the appellate authority itself.
5. Vide Order No. 2 dated September 25, 2020, the Commissioner allowed the application of respondent no. 4, treating the same as Revision Case No. Misc/01/LMR/2020 under Section 5(4) of the 1954 Act, directing the Additional District Magistrate (G) at Jalpaiguri (licensing authority) to issue a provisional licence as per provision of the 1954 Act in favour of respondent no.4 for a period of 180 days. Respondent no. 4 was

further directed to submit the succession certificate of late Ramindra Singh from the competent authority as well as pay all pending Government dues within the stipulated period.

6. Being thus aggrieved, the petitioner has taken out the present writ petition.
7. Learned senior counsel appearing for the petitioner argues that the Commissioner, being the appellate authority, did not have jurisdiction to pass the impugned order allowing an original application for grant of licence. It is submitted that, under Section 4 of the 1954 Act, the District Magistrate has been conferred with the authority to grant licences. Section 5(4) of the Act provides for an appeal against an order of a licensing authority by any aggrieved person before the Commissioner of the Division comprising such District, where the licensing authority is the District Magistrate. The said provision also provides for a revision by the State Government, of its own motion, of any order passed on appeal under Section 5(4)(a) or any order of a licensing authority, from which an appeal lies under Clause (a) but no appeal has been preferred.
8. Learned senior counsel places reliance on *Ramchandra Keshav Adke (Dead) By LRs. and others v. Govind Joti Chavare and others*, reported at AIR 1975 SC 915, wherein the Supreme Court, by placing reliance on *Taylor v. Taylor* [(1876) 1 Ch D 426], held that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden.

9. Learned senior counsel for the petitioner further contends that a review of an order of the appellate authority, by the said authority itself, is not permissible under the 1954 Act.
10. Learned senior counsel appearing for respondent no.4 cites *Bhikhubhai Vithlabhai Patel and others vs. State of Gujarat and another*, reported at (2008) 4 SCC 144 to argue that the court is entitled to examine whether there has been any material available with the State Government and the reasons recorded, if any, in the formation of opinion and whether they have any rational connection with or relevant bearing on the formation of the opinion. The court is entitled, particularly in the event when the formation of the opinion is challenged, to determine whether the same is arbitrary, capricious or whimsical.
11. Learned senior counsel next cites *Vinod Kumar vs. State of Haryana and others*, reported at (2013) 16 SCC 293, for the proposition that if wrong and illegal acts, applying the parameters of judicial review as stipulated therein, can be set aside by the courts, obviously the same mischief can be undone by the administrative authorities themselves by reviewing such an order, if found to be *ultra vires*.
12. Learned senior counsel argues that the petitioner's application, at the first instance, was for transfer of the licence in the name of the petitioner's mother and brother. Hence, the grant of licence in favour of the petitioner was palpably illegal.
13. It is further argued that, from a different perspective, the impugned order amounted to a review by the appellate authority of its own order affirming the order of the licensing authority granting provisional

licence to the petitioner. Respondent no.4, being the first wife of late Ramindra Singh, the original licensee, was entitled to a licence under the 1954 Act in her own right. As such, the appellate authority acted within jurisdiction in directing the Magistrate to grant such licence instead of relegating respondent no.4 to the licensing authority afresh. Thus, seen from such perspective also, the appellate authority acted within its jurisdiction to rectify its own error, apart from being competent, in its appellate capacity, to set aside the initial order of the licensing authority.

14. Learned counsel appearing for the respondent-authorities submits that it would have been appropriate if the concerned Magistrate, being the licensing authority, had issued the licence in favour of respondent no.4. The appellate authority apparently had no jurisdiction to do so.
15. In any event, it is submitted, the provisional licence issued to the petitioner had expired after 90 days from issuance and it was open for respondent no.4 to apply for a fresh licence.
16. In reply, learned senior counsel for the petitioner submits that, since the appellate court already decided an appeal, affirming the order of the licensing authority, previously, a further appeal was not maintainable in law, which proposition vitiates the impugned order.
17. As far as the appellate authority's power of review is concerned, learned senior counsel cites *Kalabharati Advertising vs. Hemant Vimalnath Narichania and others*, reported at (2010) 9 SCC 437, for the proposition that unless the statute/rules so permit, a review application is not maintainable in case of judicial/quasi-judicial orders.

In the absence of any provision in the Act granting an express power of review, it is manifest that a review could not be made and the order in review, if passed, is *ultra vires*, illegal and without jurisdiction. Counsel argues that the impugned order was passed by the appellate authority in its quasi-judicial jurisdiction, thus, attracting the principle laid down in *Kalabharti Advertising (supra)*.

18. Referring to *Vinod Kumar (supra)*, learned senior counsel for the petitioner submits that the said report, in turn, referred to *Patel Chunibhai Dajibha Etc. vs. Narayanrao Khanderao Jambekar and another*, reported at *AIR 1965 SC 1457*. *Patel Chunibhai (supra)*, had iterated the proposition that, in the absence of any Act or Rules, review of an earlier order is impermissible, as review is a creation of statute.
19. That apart, by placing Clause 5(4)(b) of the 1954 Act, it is argued that the said provision envisages *suo motu* exercise of revisional power by the State Government and does not confer such power on the appellate authority.
20. In the present case, it is submitted, respondent no.4 applied for licence directly to the appellate authority, which was allowed by the said authority despite having no jurisdiction under the 1954 Act.
21. A composite reading of Sections 3 and 4 of the 1954 of the Act shows that the 'licensing authority' under the Act shall be the District Magistrate within whose jurisdiction the place, where the exhibitions by means cinematograph are proposed to be given, is situated. Section 5(4)(a)(i), on the other hand, provides that any person aggrieved by an order of a licensing authority granting or refusing licence may appeal to

the Commissioner of the Division comprising such District in case the licensing authority is the District Magistrate of any District.

- 22.** Sub-clause (ii), Clause (b) of Section 5(4) stipulates that the State Government may, of its own motion, revise any order passed on appeal under sub-clause (a) or any order by a licensing authority from which an appeal lies under Clause (a), but from which no appeal has been preferred.
- 23.** In the present case, the petitioner exhausted the remedy of appeal before the Commissioner, which culminated in affirmance of the order of grant of provisional licence to the petitioner. As such, there was no further scope of appeal.
- 24.** Although it might have been argued that the appeal preferred by the petitioner could not preclude the respondent no.4, also aggrieved by such order of the licensing authority, from preferring an independent appeal, no such appeal was actually preferred by respondent no.4 at all, let alone within the stipulated time or within reasonable time after such grant. The order of grant of provisional licence to the petitioner was passed on June 20, 2018 and affirmed by the Commissioner vide Order No. 4 dated December 11, 2018. Respondent no.4 waited for almost two years and filed an independent application for permanent licence on August 19, 2020. By the impugned order, the Commissioner, being the appellate authority, decided such application of respondent no.4 and directed the District Magistrate (licensing authority) to issue a provisional licence in favour of respondent no.4 for

a period of 180 days. Thus, on the face of the records, the Commissioner did not have the authority to direct such grant of licence, but arrogated to itself the powers of the licensing authority by jumping a forum, in the process taking away the statutory right of the aggrieved party to prefer an appeal before itself.

25. Apart from such lack of original jurisdiction, it is evident that the Commissioner did not have revisional jurisdiction either, since such jurisdiction has been specifically conferred on the State Government by Section 5(4)(b)(ii) of the 1954 Act. In the present case, the State Government did not pass any order at all, in revision or otherwise, let alone on its own motion. In any event, since an appeal was already preferred, it is doubtful whether even the State Government had the power to do so in view of the specific bar stipulated in 5(4)(b)(ii) of the 1954 Act.
26. *Ramchandra Keshav Adke (supra)* stipulates that where a power is given to an authority to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. The Rule has stood the test of time, as observed in the said judgment, which observation holds good even today.
27. So far as *Vinod Kumar (supra)*, cited by the respondents is concerned, the Supreme court held therein that courts can set aside wrong and illegal acts applying the parameters as laid down therein and, as such, obviously the same mischief can be undone by administrative

authorities themselves by reviewing such an order. The parameters laid down therein are that the decision of the administrative authority has to be manifestly unjust, outrageous or directed to an unauthorised end, being arbitrary and unreasonable. Likewise, an action taken *ultra vires*, having no legal basis, can also be set aside on that ground the authority has to act within the limits defined by those Rules.

28. The above parameters are not applicable to the present case, since the Commissioner, by the impugned order, did not rectify an outrageous, manifestly unjust or *ultra vires* decision but set aside a previous order passed by itself on considering the merits of the case. The previous order of the appellate authority, affirming the order of grant of provisional licence to the petitioner, did not satisfy any of the above parameters to justify review by itself. A *de novo* adjudication by the appellate authority on merits, that too on an independent original application for licence filed by a third party, is not sanctioned either by law or procedure.
29. Looking into the proposition laid down in *Kalabharti Advertising (supra)*, the Supreme Court held there that unless the statute/rules so permit, a review application is not maintainable in case of judicial/quasi-judicial orders. In the absence of any provision in the concerned Act granting an express power of review, it is manifest that a review could not be made and the order in review, if passed, is *ultra vires*, illegal and without jurisdiction.

- 30.** *Bhikhubhai Vithlabhai Patel (supra)*, also cited by the respondents, lays down that the court is entitled to examine whether there has been any material available with the State Government and the reasons recorded, if any, in the formation of the opinion and whether they have any rational connection with or relevant bearing on the formation of the opinion. The Court, it was held, is entitled particularly, in the event, when the formation of the opinion is challenged to determine whether the formation of opinion is arbitrary, capricious or whimsical, to examine the question whether reasons for formation of opinion have rational connection or relevant bearing to the formation of such opinion and are not extraneous to the purposes of the statute.
- 31.** The said judgment was delivered in the context of Section 17(1)(a)(ii) proviso of the Gujarat Town Planning and Urban Development Act, 1976. The action of the State Government in making substantial modifications in the revised draft development plan was the subject-matter of such dispute.
- 32.** However, the yardsticks laid down therein are not satisfied in the present case, since the commissioner did not interfere with any arbitrary, capricious or whimsical determination, either by itself previously or by the licensing authority.
- 33.** *Patel Chunibhai Dajibha (supra)* referred by the petitioner in reply, was considered in *Kalabharti Advertising (supra)* and the proposition laid down in the latter judgment did not alter the position as laid down in the former, that is, in the absence of any power of review, the Collector

could not subsequently reconsider his previous decisions and hold that there were grounds for annulling or reversing the order under challenge before it.

- 34.** The aforesaid reports, read in context, clearly indicate that the power of review cannot be exercised by an administrative authority under normal circumstances, unless the parameters laid down in *Vinod Kumar (supra)* are satisfied. In the present case, neither the appellate authority, in its previous order, nor the licensing authority, took any decision which was manifestly unjust or outrageous or directed to unauthorised end. The action of the Additional District Magistrate in granting provisional licence to the petitioner was passed on merits and was a probable direction in which such decision could go. The Commissioner, as appellate authority, affirmed the same by passing a reasoned order. As such, there was no scope for subsequent review by the appellate authority itself.
- 35.** In any event, since the provisional licence of the petitioner had expired long back, respondent no. 4 was at liberty to approach the licensing authority itself for grant of a fresh licence in favour of respondent no.4. Having not done so, the order of the appellate authority entertaining such application of respondent no.4 was patently illegal and without jurisdiction.
- 36.** As such, the impugned order does not stand the test of judicial scrutiny.

- 37.** Accordingly, WPA No.8580 of 2020 is allowed, thereby setting aside Order No.2 dated September 25, 2020 passed by the Commissioner, Jalpaiguri Division, directing the District Magistrate, Jalpaiguri to issue a provisional licence as per provisions of the 1954 Act in favour of respondent no.4.
- 38.** However, both the petitioner and respondent no.4 shall be at liberty to apply afresh for grant of licence to run the cinema hall-in-question. If a fresh application for licence is made, the licensing authority, that is, the District Magistrate Jalpaiguri, shall decide the same upon hearing all interested parties and pass an order on such application in accordance with law. The merits of the contentions of either the petitioner or the respondent no.4, regarding entitlement to have a licence to run the cinema, have not been gone into by this court and the licensing authority will be free to decide the matter on its own merits in consonance with law.
- 39.** There will be no order as to costs.
- 40.** Urgent certified website copies of the order shall be provided to the parties upon due compliance of all the requisite formalities.

(Sabyasachi Bhattacharyya, J.)