
(1996) 10 CAL CK 0027

Calcutta High Court

Case No: C.O. No. 13749 (W) of 1991

Amanulla Biswas and
Others

APPELLANT

Vs

State of West Bengal
and Others

RESPONDENT

Date of Decision: Oct. 15, 1996

Acts Referred:

- West Bengal Cinemas (Regulation) Act, 1954 - Section 5(4)(a)

Citation: (1996) 10 CAL CK 0027

Hon'ble Judges: Bijitendra Mohan Mitra, J

Bench: Single Bench

Advocate: Narayan Bhattacharya, Audhendu Ghosh, Asok Dey and G. Mustafa, for the Appellant;Tulsidas Maity, for the Respondent

Final Decision: Dismissed

Judgement

B.M. Mitra, J.

This writ petition is directed against an order dated 29-08-91 passed by the Commissioner, Presidency Division which is appended as Annexure T to the writ petition reversing the order dated 19-12-89 passed by the District Magistrate, Murshidabad which is annexed as Annexure "G" to the writ petition. The order, as aforesaid, dated 19-12-89 passed by the District Magistrate, Murshidabad is proceeded by an earlier order passed by the self-same Authority on 01-06-88 which was sent to the District Magistrate being the Licensing Authority in the District under the order of the Commissioner, Presidency Division, containing a reference to an order passed by this Court in C.O. No. 7887(W) of 1987. As per the order of the High Court, the writ petitioners were allowed to operate the cinema hall for period of one month. In the said proceeding multiple objections were taken about the grant of cinema licence on the ground of closed proximity of another cinema hall and also the close proximity of the proposed sits of the cinema halt from an existing school at about distance of 1/4 kms. and also for its location from a religious

institution and also its situation adjacent to a hospital about 1 Km. away. The Authority concerned, apart from raising the contention about the proximity of another cinema hall, has taken into account of its location to religious institution and in consideration thereof no permission was granted to grant permanent cinema licence in the site as proposed. Thereafter another order has seen the light of the day vide Memo No. 3262/EN, dated 19-12-89 passed by the District Magistrate, Murshidabad and in one line the reference was made by a cryptic comment about consideration of the prayer and as a follow-up measure therefrom the same was allowed. Against the said order passed by the aforesaid Memo, a statutory appeal was taken out and the Appellate Authority reversed the said order on, inter alia, finding that D.M.'s subsequent order dated 19-12-89 permitting construction of a permanent cinema hall on the same site is apparently in contradiction to the earlier order and no reason is adduced for the palpable anomaly. It has been hinted in the order passed in appeal that it becomes difficult to reconcile two orders passed in different points of time of which one being contrary to the other and also the later order does not reflect any reasoning. this Court has looked into Annexure "G", that is the order dated 19-12-89 and it is apparent therefrom that the said order is not resonant with reason. In this context, a reference may be made to the [Vasudeo Vishwanath Saraf Vs. New Education Institute and Others](#), reported in AIR 1986 SC 2105, where it has been observed that when the statutory provision of appeal to the higher Forum has not enabled the superior Forum or the Appellate Court to know or be apprised of the reasons which impel the Court to pass the order in question, the recording of reasons in disposing of the same is a mandatory requirement to be fulfilled in consonance with the principles of natural justice. It is no answer at all to this legal proposition that the purpose of expeditious disposal of cases a laconic order like "dismissed or rejected" will be made without passing a reasoned order or a speaking order. The decision of any authority cannot partake of the character of quasi-judicial in nature of the order or administrative order having civil consequences. In passing such orders the authority will be required to comply with the twin principles namely, Audi Alterem Partem and that of fair play which includes giving reasons for the order. Even an earlier decision was referred to by Mr. Dey, the learned Advocate appearing on behalf of some of the respondents reported in AIR 1984, SC page 1271 at para 22, page 1287 where the Supreme Court held that the authority cannot give formal reasoning but reference has to be made to the allegations supported by reasons in order to provide an opportunity to the person affected to make his representation. Viewed from the said angle of the stand point the order dated 19-12-89 passed by the District Magistrate. Murshidabad suffers from apparent, infirmity. The learned Advocate for the petitioners Mr. Bhattacharya has strongly relied upon and has made a reference to AIR 1976. page 578 namely, the case of J.M. Desai... Appellant vs. Roshan Kumar & ORS.,... Respondents and also a Full Bench decision of Madras High Court, reported in the case of M.L. Krishnamurti... Appellant vs. District Revenue Officer, Vellore A Another... Respondents, reported in AIR Madras page 87, Full Bench. The bone of contention which permeates the entire range of the subsisting controversy as to whether a right of rival entrant has the locus standi to invoke the jurisdiction of Writ Court for issuance of a Writ of Certiorari.

From the decision of the Supreme Court (supra), it has been relied upon that appellant is that setting up of a rival cinema hall in the town will adversely affect his monopolistic commercial interest causing pecuniary harm and loss of business from competition. If the impugned order does not operate as the decision against the person affected, much less does it wrongfully affects its title to something he cannot be said to have been subjected to a legal wrong. He had suffered common legal grievance and as such he has no legal peg for a justiciable claim to hang on. In this context a further reference may be made where the expression "aggrieved person" has been comprehended as denoting an elastic and not to an extent an elusive concept. It cannot be confined within the boundaries of the rigid, exact and comprehensive definition. At best its features can be described in a broad tentative manner. Its scope and meaning depends on diverse valuable factors such as the content and intent of the statute of which the contravention is alleged, the specific circumstances of the case, the nature and extent of the parties interested, and the nature and extent of the prejudice or injury suffered by him. In furtherance of strong reliance placed on the aforesaid judgment a reference was made to the decision of Madras Full Bench reported in AIR 1990, Madras, page 87 where the Full Bench has referred to the aforesaid decision of the Supreme Court reported in AIR 1976, SC page 578 and the same has been reiterated and it has been observed there that rivalry in the trade is permissible is law and in that context a person cannot complain that his commercial interest is prejudicially affected. It is significant to mention that the cited decision of the Supreme Court reported in AIR 1975, as refereed, has dealt with the Bombay Cinema Regulation Act 1953 and the Rules framed there under but in the instant writ proceeding the Act involved is West Bengal Cinema (Regulations) Act, 1954 and the Rules framed thereunder. In the instant case, the private respondents in the writ application are not invoking the exercise of Writ Jurisdiction for a relief for issuance of Writ of Certiorari. It is an unsuccessful applicant who is figured as the writ petitioner and has been trying to invoke the Jurisdiction of this High Court for a relief of issuance of a Writ of Certiorari Here, in this case, the private respondents have preferred statutory appeal u/s 5(4)(a) of the West Bengal Cinema (Regulations) Act 1954. The relevant provision is set out hereunder :

(4)(a) Any person aggrieved by an order of a Licensing Authority granting or refusing to grant a licence or by any other order of a Licensing Authority which is declared by Rules made, under this Act to be appealable or by the terms and conditions on which or the restrictions subject to which a licence is granted him, within such time as may be prescribed, appeal -

(i) Where the Licensing Authority is the District Magistrate of any District to the Commissioner of the Division comprising such District,

(ii) Where the Licensing Authority is the Commissioner of Police, Calcutta - to the Commissioner of Police, Calcutta - to the Commissioner of the Presidency Division in West Bengal, and

(iii) In any other case - to such Authority as the said Government may, by notification in the Official Gazette, have specified in this behalf.

2. The language of Section 5(4)(a) as noted above is bristled with implication of exemplifying the germane expression "any person". The expression "person aggrieved" has been comprehended by Halsbury in Laws of England, 4th Edition, Volume 1, where it has been pointed out that where a right of appeal to the courts against Administrative or Judicial decision is conferred the right is frequently confined to a person aggrieved or a person who claims to be or feels aggrieved. If the statute authorises an appeal to a superior Forum, then the question arises as to whether such person can explore his remedy in terms of the provisions of appeal as contemplated in the statute. In Black's Law Dictionary, the word "aggrieved" has pointed to a person referring to a substantial grievance, a denial of some personal pecuniary or proprietary right of the imposition upon a party of a burden or obligation. Section 5(4)(a) of the West Bengal Cinema (Regulations) Act, 1954, from the perusal of the same appears to be made applicable to any person aggrieved by an order of Licensing Authority granting or refusing to grant a licence and alternatively the said section comprehends by an order of a Licensing Authority which is declared by the Rules made under this Act to be appealable. This Court need not have referred to the other alternative but can concentrate its attention to the second alternative and if the same is comprehended in a composite manner, then it appears that any order which includes within its ambit, the generality of any other order of the Licensing Authority which is declared by the Rules made under this Act to be appealable. If the Court scans the aforesaid expression with an indepth onlook about it, then this Court is made to ponder as to what is meant any other order of a Licensing Authority, which is made distinctly appealable. It may be necessary to derive inference from the known principle of "Ejusdem Generis" and a reference may be made in this content to the case of Binay Krishna vs. Surajbali Mishra, reported in AIR 1963. Calcutta, page 100, where a Division Bench of this High Court has observed that the phrase "Ejusdem Generis" is more restricted than the word "analogous". In the backdrop of the same this Court is made to think that a party who is necessary one empowered by the blessing of a statute to prefer an appeal that remedy explored by the concerned party becomes statutory remedy. If the right of appeal is a creature of the Act and the right has been availed of by any of the parties in the proceeding and such party figuring as a respondent in a writ application cannot be said to be hit by the mischief of the legal proposition that a rival in trade cannot sustain a proceeding in Writ Jurisdiction for issuance of a Writ of Certiorari. Here, ex-facie the private respondents are not invoking the exercise of Writ Jurisdiction of this High Court being rivals in trade by way of relief of remedy of Certiorari and on the contrary it is the unsuccessful appellant in a statutory appeal which is invoking the jurisdiction to have the appellate order set aside by issuance of a Writ of Certiorari. Here, in the connected writ petition, main relief sought for is for issuance of a Writ of Mandamus namely, one of the modes to have the appellate order quashed in the connected appeal and Writ of Certiorari is being prayed for the purpose of remittance of the records of the case. This Court has no doubt with regard to the

applicability of the well-known principle as laid down in the well settled principles that rival in trade has no right to invoke the jurisdiction of the High Court for issuance of a Writ of Certiorari but here jurisdiction has been invoked for issuance of a Writ of Mandamus at the instance of an unsuccessful respondent in a statutory appeal under the Act, namely the West Bengal Cinemas (Regulations) Act, 1954 to have the appellate order set aside. Therefore, without disagreeing with the legal proposition as sought to be expounded that rival in trade has no locus standi to invoke the relief for a Writ of Certiorari but the facts in the instant case the clearly and categorically distinguishable a here the Writ of Mandamus is asked for by an unsuccessful party in a statutory appeal to have that appellate order set aside. Therefore, the position in the instant writ petition is radically different from the given position of the facts as to be discerned in the narration of the cited decisions which have enumerated the principle that rival in trade has no right to invoke the jurisdiction of the Writ Court for issuance of a relief of Certiorari being clearly distinguishable. this Court cannot apply the said principle in this case. Therefore, this Court after giving its anxious consideration to the interesting propositions of law canvassed by the respective parties is left with no other alternative but to dismiss the writ petition for the reasons as indicated hereinbefore. Therefore, the writ petition fails and it stands dismissed on contest. In view of the later order passed by the concerned District Magistrate dated 19.12.89 without indication of any reason whatsoever and as such the said order loses its effect because of its intrinsic infirmity. Accordingly, the District Magistrate shall consider the representative made by the writ petitioner on the materials on record, if the same is sought to be reheard and the order will be required to be passed in accordance with the reason and the same should be preferably passed within a period of 4 months from the date communication of this order. In view of the order of remand passed on orders in between will abide by this order of remand and the same will be required to be substituted by a fresh order to be passed by the District Magistrate, Murshidabad.