

STATE OF GUJARAT AND ANR.

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v.

M/S. KRISHNA CINEMA AND ORS.

September 10, 1970

[J. C. SHAH, K. S. HEGDE AND A. N. GROVER, JJ.]

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Bombay Cinemas (Regulation) Act 11 of 1953 and Rules—Rule 89 does not prohibit construction of cinema building before grant of no objection certificate by Licensing Authority—Direction given by State Government to Licensing Authority, vitiated if there is no application of mind to facts—Appellate order under s. 8A must give reasons—Use of words 'absolute discretion' in s. 5(2) of Chapter II does not invest State Government with arbitrary power.

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The Bombay Cinemas (Regulation) Act 11 of 1953 and the rules made thereunder were made applicable to the territory of the State of Gujarat by the Bombay Reorganisation Act, 1960. Under s. 3 of Act 11 of 1953 films can be exhibited only in licensed premises. By s. 4(3) the District Magistrate is, where there is no Commissioner of Police, the Licensing Authority. By s. 5 the Licensing Authority is subject to the control of the State Government. A person aggrieved by the order of the Licensing Authority has under s. 8A a right of appeal to the State Government. Rule 5(2) authorises the Government on consideration of the report of the Licensing Authority, in its absolute discretion to grant permission for the issue of a no objection certificate to the applicant or to refuse to grant the same. By r. 89 it is enacted that no person shall put up any building or structure or convert existing premises for being used as a cinema except with the permission in writing of the Licensing Authority.

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The respondents carried on the business of exhibiting cinematograph films in a theatre named Krishna Cinema at Rajkot. On May 14, 1963 they applied to the District Magistrate for a 'no objection certificate' to the user of a building to construction as an 'annexe' to the Krishna Cinema. The Magistrate sanctioned the construction of the building and the plans submitted by the respondents were approved by the Executive Engineer. On completion of the building the Executive Engineer recommended the grant of a 'no objection certificate'. Thereafter the District Magistrate in his report of the State Government suggesting that a no objection certificate be granted even though the construction of the building before the grant of the certificate was against the rules. The Government of Gujarat intimated by a letter dated July 9, 1964 written by the Addl. District Magistrate, Rajkot that the application filed by the respondents could not be granted. An appeal filed against the order communicated by the Addl. District Magistrate to the State Government was rejected. The respondent filed a writ petition in the High Court which succeeded. The State of Gujarat appealed to this Court relying on r. 89 for their contention that the building was constructed in violation of the rules and, therefore, the refusal of a 'no objection certificate' was justified. Dismissing the appeal,

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HELD : (1) Rule 89 authorises the Licensing Authority to allow conversion of an existing building into a cinematograph theatre. Therefore the completion of the building before the Government considered the request to a 'no objection certificate' did not constitute a bar to the exercise of jurisdiction to grant the certificate and District Magistrate was right in his view that the certificate applied for must be granted. [115 B-C]

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- A** The 'annexe' complied with all the requirements of the rules, but by letter dated July 9, 1964 the Licensing Authority under instructions of the State Government informed the respondent that application for constructing a permanent annexe near the present Krishna Cinema and for obtaining a 'no objection certificate' was not admissible. The building had been constructed several months before the date on which the letter was written. The contents of the letter created an impression that in the view of the authorities the building had still to be constructed. It was clear that the authority did not apply its mind to the application. It did not consider whether a building which was already in existence should be allowed to be converted into a cinematograph theatre. [116 A-C]
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- Further in dismissing the appeal preferred to the State Government it was recorded that the Government did 'not see any reasons to change the decision already taken by the District Magistrate'. The order of the State Government which was a reaffirmation of its original decision communicated through the Licensing Authority gave no indication that the objections raised in the memorandum of appeal were considered. No reasons in support of the order were set out. [116 C-D]
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- Since the State Government did not correctly apprise itself of the facts when it gave its directions to the Licensing Authority to dismiss the application and later dismissed the appeal without giving any reasons, its order giving directions to the District Magistrate and in appeal were rightly set aside by the High Court. [117 A-B]
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- (ii) Power to control the Licensing Authority under s. 5 is not power to supplant the Licensing Authority. The power to grant a licence under the Act is a quasi-judicial power and by the use of the Expression 'absolute discretion' in r. 5 it is not intended to invest the Licensing Authority with arbitrary power so as to destroy the limitations to which it is subject by its inherent nature. [116 G-H]
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- [The court found it unnecessary for the purpose of the case to express any opinion on the propriety or validity of provisions making exercise of quasi-judicial power subject to the control, at the stage when it was exercised, of the executive. It observed however that a right of appeal under s. 8A the State Government against the order of the Licensing Authority issued under the order of the State Government was a futile formality and served no useful purpose]. [114 F-H]
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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1435 of 1970.

- Appeal by special leave from the judgment and order dated August 12, 13, 1969 of the Gujarat High Court in Special Civil application No. 919 of 1969.
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S. K. Dholakia, B. D. Sharma and S. P. Nayar, for the appellants.

A. K. Sen, H. R. Gokhale, J. L. Hathi, K. N. Bhat and K. L. Hathi, for the respondents.

- H** The Judgment of the Court was delivered by

Shah, J. The respondents in this appeal carry on the business of exhibiting cinematograph films in a theatre named Krishna

Cinema at Rajkot. On a plot of land adjacent to the Krishna Cinema the respondents desired to construct "an annexe" for exhibiting foreign films with independent screen and auditorium. On May 14, 1963 the respondents applied to the District Magistrate [who is the Licensing Authority under the Bombay Cinemas (Regulation) Act 11 of 1953] for a 'no objection certificate' to the user of the "annexe" to be constructed on the site for exhibiting cinematograph films. On the same day they submitted to the Executive Engineer plans of the proposed building of "annexe" to be used as a cinematograph theatre. They also applied to the local Municipality for leave to construct a building to be used for cinematograph theatre. The Municipality sanctioned construction of the building. The Executive Engineer also signified his assent by letter addressed to the Additional District Magistrate to the grant of a "no objection certificate"

By an application submitted on May 14, 1963 the respondents prayed that a "no objection certificate" under the Bombay Cinemas (Regulation) Act be granted in respect of the "annexe" to be constructed. As required by the rules framed under the Act the District Magistrate notified the application and invited objections to the proposal. The District Magistrate then forwarded his report to the Government of Gujarat that according to the rules the respondents should have commenced construction of the "annexe" only after obtaining the 'no objection certificate' under the Act, but since the building was constructed with the sanction of the Municipality and the building was in conformity with the rules, he recommended that the "no objection certificate" be granted. The Government of Gujarat intimated by a letter written by the Additional District Magistrate, Rajkot that the application filed by the respondents could not be granted. An appeal filed against the order communicated through the Additional District Magistrate to the State Government was rejected and the respondents were asked not to make any further representations in that behalf.

The respondents then filed a petition in the High Court of Gujarat for a declaration that r. 5 sub-r. (2) of the Bombay Cinema Rules, 1954, infringes Art. 19(1)(f) & (g) of the Constitution and for a direction calling upon the Government of the State of Gujarat to grant 'no objection certificate' as applied for by them for setting up a cinematograph theatre in the "annexe" and for an order quashing or setting aside the communications from the District Magistrate and the order in appeal passed by the State of Gujarat and to direct the State of Gujarat and the District Magistrate to consider the application of the respondents for 'no objection certificate' in accordance with law. The High Court of Gujarat upheld the contention raised by the respondents and set aside the orders of the State Government and of the District Magistrate.

A The High Court directed that a writ of *mandamus* be issued directing the State Government to permit the District Magistrate to issue a 'no objection certificate' and the District Magistrate to issue such a certificate to the respondents as prayed in their application. The State of Gujarat has appealed to this Court with special leave.

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Exhibition of cinematograph films and licensing of places for such exhibition is governed by the Bombay Cinemas (Regulation) Act 11 of 1963. By virtue of the provisions contained in the Bombay State Reorganisation Act, 1960, the Act and the Rules are applicable to the territory of the State of Gujarat. By s. 3 of the Bombay Cinemas (Regulation) Act, 1953, "save as otherwise provided in the Act no person shall give an exhibition by means of a cinematograph elsewhere than in a place licensed under the Act or otherwise than in compliance with any conditions and restrictions imposed by such licence". In the town of Rajkot, by virtue of s. 4(3) of the Act the District Magistrate is the Licensing Authority. By sub-s. (1) of s. 5 the Licensing Authority is prohibited from granting a licence unless it is satisfied that the rules made under the Act have been substantially complied with and adequate precautions have been taken in the place, in respect of which the licence is to be given, to provide for the safety of persons attending exhibition therein. By s. 5(2) subject to the provisions of sub-s. (1) and to the control of the State Government the Licensing Authority may grant licences under the Act to such persons as that Authority thinks fit. Section 7 authorises the Licensing Authority with power to revoke or suspend a licence. Any person aggrieved by an order of a Licensing Authority, *inter alia*, refusing to grant a licence or revoking or suspending any licence, may under s. 8A appeal to the State Government : s. 9 provides for the making of the rules for the purpose of carrying into effect the provisions of the Act. By r. 3, insofar as it is relevant it is provided :

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“(2) Any person desirous of erecting a cinema or converting existing premises into a cinema shall first make public his intention to do so by exhibiting a notice in Form “A” on a board on the proposed site in such a position that it can be plainly seen from the public thoroughfare upon which the site of such proposed cinema abuts.

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“(3) Such person shall also give a similar notice in writing to the Licensing Authority and make an application to the Licensing Authority for the grant of a “No objection” Certificate specifying therein whether the

application is in respect of a permanent cinema or a touring cinema."

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By r. 4 provision is made for inviting objections on receipt of a notice from the applicant. Rule 5(2) authorises the Government, on consideration of the report of the Licensing Authority, in its absolute discretion to grant permission for the issue of a "No objection certificate" to the applicant or to refuse to grant the same. Chapter III of the Rules prescribes rules relating to buildings to be used for cinematograph theatres. Chapter IV prescribes rules relating to electric installation and Chapter V prescribes precautions against fire. By r. 89 which occurs in Chapter VI it is enacted that "no person shall put up any buildings or structure or convert existing premises for being used as a cinema except with the previous permission in writing of the Licensing Authority." Rules 90 provides for the making of an application for permission. Rule 91 provides for submission of the plans along with the application. Rule 92 provides for the approval by the Public Works Department of the plans and r. 93 for permission to build. Rule 94 provides that the applicant shall complete the construction of the cinema within a period of two years from the date of the permission or within such extended period as may be allowed by the Licensing Authority.

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Under the Act the District Magistrate is, in places where there is no Commissioner of Police, constituted the Licensing Authority. By s. 5 the power of the Licensing Authority is subject to the control of the State Government. Authority to license a cinematograph theatre is therefore vested in the Licensing Authority subject to the overriding control of the State Government. It is difficult to appreciate what purpose may be served by giving a right to appeal to the State to a person aggrieved by the order of the Licensing Authority, if the original order is made under the direction and subject to the control of the State Government. A right of appeal under s. 8A against the order of the Licensing Authority issued under the order of the State Government is a futile formality and serves no useful purpose. Power to issue, revoke or suspend a licence conferred upon the District Magistrate is exercisable on satisfaction of that officer of certain objective conditions and is plainly quasi-judicial. But exercise of power by the Licensing Authority to grant a licence is still made subject to the control of the State Government. It is unnecessary for the purpose of this case to express any opinion on the propriety or validity of provisions making exercise of quasi-judicial power subject to the control, at the stage when it is exercised, of the executive.

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From the affidavit filed on behalf of the State Government it appears that the only grounds of objection to the grant of the 'no

- A** objection certificate' was that contrary to the terms of r. 89 the respondents had constructed the "annexe" before the State Government considered their application for a "no objection certificate". It appears however from the report of the Licensing Authority that plans of the building intended to be constructed complied with the rules framed under the Act and the building constructed did
- B** not contravene the provisions of the Act and the Rules, Rule 89 authorises the Licensing Authority to allow conversion of an existing building into a cinematograph theatre. Therefore the completion of the building before the Government considered the request for a "no objection certificate" did not constitute a bar to the exercise of jurisdiction to grant the certificate and the District
- C** Magistrate was right in his view that the certificate applied for should be granted.

- A proposal for setting up a cinematograph theatre in a Municipal area has to be cleared by three authorities. First is the Municipal Authority which must sanction the proposed construction. For that purpose building plans have to be submitted and construction has to be completed within one year from the date of sanction. Again the application for putting up a building to be used as a cinematograph theatre must be accompanied by plans to be approved by the Public Works Department, and the building may be constructed only after permission is granted by the Public Works Department. The building so permitted must be completed within two years from the date of permission or such extended
- D** period as may be allowed by the Licensing Authority. The third is the Licensing Authority who under s. 4 read with ss. 3 and 5(1) has the power to issue a licence under the Act. Somewhat inconsistently r. 5(2) states that the Government may grant the "No Objection Certificate" which for some unexplained reason is used as a synonym for "Licence" in the Act.
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- F** In the first instance the Rajkot Municipality sanctioned construction of the "annexe" by the respondents by letter dated May 28, 1963 and the Executive Engineer by letter dated September 13, 1963 informed the Licensing Authority—copy of which information was sent to the respondents—that the former had "no objection to issue sanction for the construction of "annexe" to the existing Krishna Cinema". It was also recorded in the letter that the respondents had agreed to carry out modifications in the plan as may be suggested by the Executive Engineer. At the foot of the letter was a note that "the suggestions in accordance with the Bombay Cinema Rules, 1954" were being forwarded to the respondents separately.
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- H** The respondents then applied by letter dated January 2, 1964 to the Licensing Authority that the "annexe" had already been constructed and the sanction to use it as a cinematograph theatre

may be granted. The "annexe" complied with all requirements of the rules, but by letter dated July 9, 1964 the Licensing Authority under the instructions of the State Government informed the respondents that "application for constructing a permanent annexe near the present Krishna Cinema and for obtaining a 'no objection certificate' is not admissible". The building had been constructed several months before the date on which that letter was written. The contents of the letter create an impression that in the view of the authorities the building had still to be constructed. It is clear that the authority did not apply its mind to the application. It did not consider whether a building which was already in existence should be allowed to be converted into a cinematograph theatre.

In dismissing the appeal preferred to the State Government it was recorded that the Government did "not see any reasons to change the decision already taken by the District Magistrate" and that decision was communicated to the respondents by letter dated July 9, 1964. The order of the State Government which is a re-affirmation of its original decision communicated through the Licensing Authority gives no indication that the objections raised in the memorandum of appeal were considered. It sets out no reasons in support of the order. The authority which made the order on behalf of the State Government appears to have been oblivious of the circumstances in which the building was constructed. The Government did not consider whether a building already in existence which complied with all the requirements of the Rules should be allowed to be converted into a cinematograph theatre.

It was urged on behalf of the State Government that under r. 5(2) in Chapter II the State Government has *absolute discretion* to grant permission for the issue of a "no objection certificate" to the applicant. Under the Act the District Magistrate and not the State Government is the Licensing Authority. Granting that the State Government may validly control the exercise of power by the Licensing Authority, on that question we express no opinion—the State Government cannot relying upon the Rules assume to itself the jurisdiction of the Licensing Authority to issue the licence. Power to control the Licensing Authority under s. 5 is not the power to supplant the Licensing Authority. Again the power to grant a licence under the Act is quasi-judicial, and by the use of the expression "absolute discretion" it is not intended to invest the Licensing Authority with arbitrary power so as to destroy the limitations to which it is subject by its inherent nature. The Act does not purport to confer arbitrary authority upon the Licensing Authority or the State Government, and by the use in the rules of the expression *absolute discretion* the legislative intent disclosed by the Act cannot be superseded.

- A** It is clear on a perusal of the record that the State Government did not correctly apprise itself of the facts when it gave its directions to the Licensing Authority to dismiss the application, and the State Government also acted in violation of the rules which inhere the exercise of judicial power when it dismissed the appeal without giving reasons. The orders dated July 9, 1964 and August 21, 1964 were rightly set aside by the High Court.
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The appeal therefore fails and is dismissed with costs.

G.C.

Appeal dismissed.