

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 10231 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA

sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

K NEWS CHANNEL
Versus
STATE OF GUJARAT

Appearance:

MR RAHUL SHARMA, ADVOCATE for the Petitioners

MR SAHIL B. TRIVEDI, AGP for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE A.S. SUPEHIA

Date : 13/06/2022

ORAL JUDGMENT

1. Rule. Learned Assistant Government Pleader Mr.Trivedi, waives service of notice of Rule on behalf of the respondent No.1.

2. The present writ petition has been filed seeking the following prayers.

"8. B) Issue a writ of mandamus or any other writ, order or direction to quash and set aside the impugned Order dated 04.06.2022, of Respondent No. 2 cancelling the license issued to Respondent No. 2;

C) Pending the disposal of this petition, stay the operation of the impugned Order dated 04.06.2022, in the interest of justice."

3. Learned advocate Mr.Sharma, appearing for the petitioners has placed reliance on Section 8 of the Gujarat Cinemas (Regulation) Act, 2004, (for short, "the Act"). Section 8 of the Act, reads as under.

"8. In the event of any contravention by the holder of a licence of any of the provisions of this Act or the rules made thereunder or of any of the conditions or restrictions upon or subject to which the licence has been granted to him under this Act or of any of the conditions or restrictions imposed. by an order of exemption made under section 13, or in the event of his conviction of an offence under section 7 of this Act or section 7 of the Cinematograph Act, 1952, the licensing authority may revoke the licence or suspend it for such , period as it may think fit:

Provided that no licence shall be revoked or suspended unless the holder thereof has been given reasonable opportunity to show cause"

4. Learned advocate Mr.Sharma, appearing for the petitioners has further submitted that the impugned order is absolutely silent with regard to violation of any of the conditions of the licence, which has been granted to the petitioners by the order dated 20.11.2019 and subsequently, extended till 19.11.2022. He has submitted that as per Section 8 of the Act, before revoking the licence or suspending the same, the holder thereof has to be afforded a reasonable opportunity to show cause, which in the present case is missing. In support of his submissions, he placed reliance on the following decisions in the case of Uttar Pradesh Power Transmission Corporation Ltd., Vs. CG Power and Industrial Solutions Ltd., 2021 SCC OnLine SC 383, in the case of U.P. State Spinning Co. Ltd., Vs. R.S. Pandey and another, (2005) 8 SCC 264, in the case of Commissioner of Income Tax and others Vs. Chhabil Dass Agarwal, (2014) 1 SCC 603 and in the

case of ITC Ltd., and another Vs. Union of India judgment dated 02.11.1982 passed in C.M. No.4020 of 1982 in C.W. 2925 of 1982 (Delhi High Court) and has submitted that the writ petition is maintainable though the petitioner has the remedy to file an appeal.

5. Learned Assistant Government Pleader Mr.Trivedi, is not in position to dispute that the impugned order cancelling or revoking the licence granted to the petitioners has been passed without issuing any show cause notice.

6. This Court has perused the impugned order, it appears that the District Magistrate, Ahmedabad while cancelling the licence of the present petitioners has placed reliance on the registration of FIR for the offences mentioned therein for revoking the licence. The said order does not anywhere reflect that any of the conditions mentioned in the order dated 20.11.2019 granting licence to the present petitioner has been violated. A close reading of Section 8 of the Act, provides that there has to be a conviction of offence under Section 7 of the Act or Section 7 of the Cinematograph Act, 1952, which result in cancelling or revoking the licence or any violations of conditions of licence. Thus, there appears to be total non-application of mind by the District Magistrate, Ahmedabad, while passing the impugned order.

7. This Court is conscious about the alternative remedy available to the petitioners under the Act, more particularly, Sections 10 and 11 of the Act. The Supreme Court in the case of Radha Kirshan Industries Vs. State of Himachal Paresh and others, 2021 SCC OnLine SC 334, has summarized the

principles governing the exercise of writ jurisdiction by the High Court in the presence of an alternate remedy. The Apex Court has observed thus:-

*"28. The principles of law which emerge are that:
(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;*

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where

(a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution;

(b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law."

8. The case of the petitioners will fall under Exception (b) of the aforesaid principles. Thus, in view of the blatant violation of the principles of natural justice and the failure to adhere to the provisions of Section 8 of the Act, this Court is inclined to set aside the impugned order.

9. With the above-noted reasons and observations, this petition is allowed. The impugned order dated 04.06.2022

passed by the District Magistrate, Ahmedabad, is hereby quashed and set aside. The matter is remanded to the District Magistrate, Ahmedabad, to decide the same afresh, after following the provisions of the Act. Rule is made absolute.

Direct Service is permitted.

sd/-

(A. S. SUPEHIA, J)

MAHESH BHATI/01

