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CITY CORNER

v.

PERSONAL ASSTT. TO COLLECTOR & ADDL. DISTRICT
MAGISTRATE, NELLORE

September 29, 1975

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[A. ALAGIRISWAMI, P. K. GOSWAMI AND N. L. UNTWALIA, JJ.]

Andhra Pradesh (Andhra Area) Places of Public Resort Act, 1888—S.12—Scope of—Principles of natural justice—If violated.

C

Section 12 of the Andhra Pradesh (Andhra Area) Places of Public Resort Act, 1888, empowers the District Magistrate to call for any proceeding taken under the Act, to call for any report in connection therewith, to make or cause to be made any further enquiry and to pass any order which the authority holding the proceeding might have passed. Section 7 of the Act states when the authority concerned could grant a licence. Section 9 states when an authority granting a licence could revoke or suspend the same.

D

The appellant was granted a licence for conducting games of skill and dances and other quality performances. Objections having been raised, the Additional District Magistrate issued a show cause notice to the appellant. In reply, the appellant had asked for copies of certain documents on the basis of which the show cause notice had been issued. In the meantime, however, the appellant submitted a tentative explanation stating that a detailed explanation would be sent after the receipt of the copies of the documents. Immediately thereafter the District Magistrate cancelled the licence on the ground that the explanation offered was a routine one and was not convincing.

The High Court dismissed the writ petition of the appellant.

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On appeal to this Court it was contended that (i) the order of cancellation was in violation of the principles of natural justice; and (ii) the District Magistrate could revoke the licence under s.12 only on any of the grounds mentioned in s.9.

Allowing the appeal,

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HELD : 1(a) The order passed by the District Magistrate immediately after he received the appellant's reply without either giving him the copies asked for or atleast telling him that the material already furnished was sufficient to enable him to make his representation and if he had any further representation to make, he could do so, offends the principles of natural justice. [41 F].

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(b) It is now well established by decisions of this Court that an authority making a quasi-judicial order should follow the principles of natural Justice before passing an order, even where the statute in question does not so provide. It is also well established that principles of natural justice do not necessarily conform to a fixed formula nor is it a procrustean bed into which all proceedings must be fitted. The principles of natural justice will always depend upon the facts of each case. [41 B].

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In the instant case when the appellant asked for the original documents, he could at least have been told that he had already been given a summary of the documents which was sufficient to enable him to make his representation. The District Magistrate's characterisation of the interim reply of the appellant as a routine one is not correct. [41 D—E].

2. The revising authority under the Act is entitled, on the same material, to take a view different from that of the authority whose order is revised. The power under s. 12 is to pass any order which the authority holding the

proceeding might have passed, that is, an order granting, revoking or suspending a licence. If the authority competent to grant a licence refuses, the District Magistrate, in exercise of his powers under section 12, may grant a licence and *vice versa*. Similarly, he could revoke or suspend the licence granted by the authority or where the authority has revoked or suspended the licence, cancel that order. The reasons for which this power could be exercised are not restricted to those mentioned in s. 7 or 9. The revisional power under s. 12 is not a limited one. It is as wide as that of the original authority. [40 G—H].

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 837 of 1975.

Appeal by special leave from the judgment and order dated 6th March, 1975 of the Andhra Pradesh High Court in Writ Appeal No. 96/75.

A. V. Koteswara Rao and *B. Kanta Rao*, for the appellant.

P. Ram Reddy and *P. P. Rao*, for the respondent.

The Judgment of the Court was delivered by

ALAGRISWAMI, J.—On 15-7-1974 the appellant applied for a licence under the Andhra Pradesh (Andhra Area) Places of Public Resort Act, 1888 for conducting games of skill and dances and other quality performances in a village adjoining the district headquarters' town of Nellore, with its 12 cinema theatres, in Andhra Pradesh. That Act has been extended to this Panchayat. On 25-9-1974 the licence **was refused** by the Executive Officer of the Panchayat. Its grant had been objected to by the Superintendent of Police as also two associations called Mitramandali and the Town Yuvajanasangham. But on appeal to the village Panchayat as provided in section 129 of the Panchayats Act a licence was granted on 1st October, 1974. The Mitramandali made a representation to the Chief Minister and the District Panchayat Officer, the Deputy Superintendent of Police, the Superintendent of Police, the Tehsildar, and the Revenue Divisional Officer also reported against the grant of licence. On 21st January 1975 the Additional District Magistrate issued a notice to the appellant to show cause why the licence issued to him should not be cancelled. The appellant had in the meanwhile put up semi-permanent structures as required under the terms of the licence which even according to the Executive Engineer, Zila Parishad, Nellore should have cost him Rs. 27,000/-. He commenced his business on 22nd January 1975 and the show cause notice issued by the District Magistrate reached him on the 25th. He sent a reply on the 27th and on the 28th the licence was cancelled. The appellant's writ petition questioning the cancellation was dismissed by a Single Judge of the Andhra Pradesh High Court, so was an appeal against that dismissal by a Division Bench. This appeal has been filed in pursuance of special leave granted by this Court.

In his reply to the show cause notice the appellant had asked for copies of the various documents on the basis of which the show cause notice had been issued and stated that in their absence he was not in a position to submit a detailed explanation in reply and he was, however, offering a tentative explanation promising a fuller and detailed

A explanation after the receipt of the copies. In particular in respect of a reference to a murder in the show cause notice he stated that it took place in the premises of another amusement park long after it was closed for want of licence. The District Magistrate considered that the explanation offered was a routine one and was not convincing.

B Section 12 of the Andhra Pradesh (Andhra Area) Places of Public Resort Act enables the District Magistrate to call for and examine the record of any proceeding taken under the Act, to call for any report in connection therewith, to make or cause to be made any further enquiry and to pass any order which the authority holding the proceeding might have passed. Under section 9 any authority granting a licence may for reasons recorded in writing, revoke or suspend the same when he has reason to believe:

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- (a) that the licence has been fraudulently obtained;
 - (b) that the enclosed place or building has been used for other purposes of public resort or entertainment than that for which the licence was granted; and
 - (c) that the place or building can no longer be safely used for the purpose for which the licence was granted.
- D**

Undoubtedly none of the reasons applied in this case. Under section 7 if the authority is satisfied

- (a) that the enclosed place or building may safely be used for the purpose of public resort or entertainment proposed;
 - (b) that no objection, arising from its situation, ownership, or the purpose proposed, exists,
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he shall grant to the applicant a written licence. The only ground in this section applicable to the present case would be 'the purpose proposed'.

F The argument before us was that the power of the District Magistrate to revoke the licence under s. 12 can be for only any of the grounds mentioned in s. 9. The power under s. 12 is to pass any order which the authority holding the proceeding might have passed, that is, an order granting, revoking or suspending. In other words, if the authority competent to grant the licence refuses, the District Magistrate in exercise of his power under s. 12 may grant the licence and vice-versa, Similarly he can revoke or suspend the licence granted by the authority or where the authority has revoked or suspended the licence cancel that order. In other words the power under s. 12 is to pass the kind of order which might be passed under section 7 or 9. The reasons for which this power can be exercised are not restricted to those mentioned in section 7 or 9. The revisional power under s. 12 is not a limited one. It is as wide as that of the original authority. The considerations which the District Magistrate took into account in revoking the appellant's licence were the same as those which were before the Village Panchayat when it decided to grant the licence. The revising authority is entitled on the same material to take a view different from that of the authority whose order is revised.

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But the main ground of attack against the order of cancellation is that in making it the District Magistrate had failed to observe the principles of natural justice. The order that the District Magistrate passed is a quasi-judicial order and therefore the appellant is right in contending that the principles of natural justice should have been followed before that order was passed. It is now well established by decisions of this Court that such is the requirement of law even where the statute in question itself does not so provide. It is also well established that the principles of natural justice do not necessarily conform to a fixed formula, nor is it a procrustean bed into which all proceedings must be fitted. The principles of natural justice will always depend upon the facts of each case. The learned Judges of the High Court examined the various documents the copies of which had been asked for by the appellant and came to the conclusion that the show cause notice issued to him contained a summary of all those documents which was sufficient to enable the appellant to make his representation. We cannot say that this conclusion is wrong. It is not always necessary that the documents asked for should itself be furnished provided the substance of those documents is furnished, always provided, however, that the summary is not misleading. Such is not the case here. But when the appellant asked for the original documents he could at least have been told that he had already been given a summary of the documents which was sufficient to enable him to make his representation and he could make his fuller representation as he had promised in his earlier so-called interim reply. The District Magistrate's characterisation of the interim reply of the appellant as a routine one is not correct. After all the opinion of the Village Panchayat which is a representative body of all the villagers is entitled to great if not greater weight than that of the Mitramandli and the Town Yuvajanasangham, the composition of which or the strength of which we do not know. The Village Panchayat was also competent on a consideration of all the facts to form its own opinion. The opinions of representative bodies should not be lightly brushed aside unless of course there is reason to think that they have acted out of considerations other than relevant. We are of opinion that the order passed by the District Magistrate post-haste immediately he received the appellant's reply without either giving him the copies asked for or at least telling him that the material already furnished was sufficient to enable him to make his representation and if he had any further representation to make he could do so offends the principles of natural justice. We are aware that we are dealing with an appeal questioning the proceedings initiated under Article 226 of the Constitution where the power of the court is a limited one, that is to say, limited to cases where there is any error of law apparent on the face of the record. But the observance of the principles of natural justice is fundamental to the discharge of any quasi-judicial function. We therefore allow the appeal and set aside the order of the District Magistrate. There will be no order as to costs.

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