over from the appellants. In the circumstances, this is not a case fit for exercise of power under Art. 142 and declare the acquisition of the appellants' land bad although the acquisition proceedings have been completed in accordance with law.

33. Lastly, the learned Senior Counsel invited our attention to the application (I.A. No. 4) wherein the appellants offered for amicable settlement by expressing their readiness and willingness to give an area of land admeasuring 13,250 sq.ft. out of the total land of 1.45 acres (*i.e.* a acre and 19,445 sq.ft.) free of cost to the Corporation. The offer is not acceptable to Mr. B. Balaji. He submitted that such a small area is of no use for expansion of the existing depot. We do not find any unreasonableness in the submission of the Counsel that an area of 13,250 sq.ft. would not meet the purpose for which the appellants' land has been acquired.

34. In view of the above, there is no merit in the appeal and it is dismissed. I.A. No. 4 and other pending applications, if any, stand disposed of. No costs.

(NRP) *Appeal dismissed.*

* * *

SPECIAL CIVIL APPLICATION

Before the Hon'ble Mr. Justice S. R. Brahmbhatt

CINEPOLIST INDIA PVT. LTD. & ANR. v. STATE OF GUJARAT THROUGH SECRETARY & ORS.*

Gujarat Cinemas (Regulation) Act, 2004 (21 of 2004) — Secs. 8 & 7 — Bombay Cinema Rules, 1954 — Rules 131(1) & 130C — Power to suspend licence under Sec. 8 or Rule 131(1), held, cannot be invoked to impose punishment for past breach — Said power meant for some exigency arresting continuous breach — Power for penalty to be found in Sec. 7 and Rule 130C — Further, even if Sec. 8 or Rule 131(1) can be invoked for penalty suspension of licence for showing movie beyond time-limit disproportionate penalty — Orders by District Magistrate and appellate authority quashed.

ગુજરાત સિનેમા (નિયમન) અધિનિયમ, ૨૦૦૪ — કલમ ૮ અને ૭ — મુંબઈ સિનેમા નિયમો, ૧૯૫૪ — નિયમ ૧૩૧(૧) અને ૧૩૦સી — કલમ ૮ અને નિયમ ૧૩૧(૧) હેઠળની પરવાનો નિલંબિત કરવાની સત્તા, ઠરાવવામાં આવ્યું કે, અગાઉ ભૂતકાળમાં થયેલ ભંગ માટે સજા કરવા અખત્યાર કરી શકાય નહિ — આવી સત્તા સળંગ ભંગ થયો હોય તેવા કિસ્સા માટે છે — દંડ કરવાની સત્તા કલમ ૭ અને નિયમ ૧૩૦સી હેઠળ છે — વધુમાં, કલમ ૮ અને નિયમ ૧૩૧(૧) હેઠળ આપેલ સત્તા અખત્યાર થઈ શકે જો કે સમય-મર્યાદા પૂરી થયા પછી ચલચિત્ર દેખાડવા માટે પરવાનો નિલંબિત કરવો અપ્રમાણસર દંડ છે — જિલ્લા મેજિસ્ટ્રેટનો અને અપીલ સત્તાધિકારીના હુકમ રદ કરવામાં આવ્યા.

*Decided on 24/27-2-2012. Special Civil Application No. 2376 of 2012.

The plain reading of the order impugned coupled with the notice imminently go to show that the District Magistrate has inflicted punishment upon the petitioners. The order of punishment is passed for the petitioners' offence of exhibiting cinema beyond upper time-limit. The notice and order even ostensibly also not indicate anywhere that it was passed for restricting any continuing breach or nuisance or for restricting any imminent danger to public life or safety. But it was issued only for punishing petitioner. (Para 31)

The power to suspend licence cannot be equated with powers to suspend licence by way and as punishment. The power of suspension of licence by way of punishment can never be read into these provisions. In fact the powers of suspension of licence as provided under Sec. 8 of the Cinema Act and Rule 131(1) of the Cinema Rules is for an exigency which would warrant such suspension on account of the telling and compelling reasons. (Para 32)

In other words the power to suspend is to be exercised only for arresting or controlling situation or restricting happening warranting suspension of licences irrespective of the fact that licensee may be or may not be responsible for such happening. The exercise of power of suspension of license as envisaged under Sec. 8 or Rule 131(1) is merely power enabling the District Magistrate to suspend the licence for valid reason for averting or restricting and for overcoming an eventuality but it does not envisage that it could be used as punishment as a special provision is made in form of Sec. 7 and Rule 130C for imposing punishment for breach of the licence. (Para 32)

Therefore, the Court opinion is clear that the power to suspend by way of punishment of licence is not envisaged or provided or construed from the provision of Sec. 8 as well as Rule 131(1) of the Rules. (Para 35)

Even assuming for the sake of argument without holding there exist semblance of power under Rule 131(1) of the Cinema Rules or Sec. 8 of the Cinema Act, then also question arises as to whether such a drastic punishment was ever required to be imposed in light of the observation of the Apex Court in case of *Karnataka Rare Earth,* (2004 (2) SCC 783), as Sec. 7 and Rule 130C provides for maximum penalty of Rs. 1,000/- and Rs. 100/- per day thereafter; meaning thereby, was it open to the District Magistrate to read into this Sec. 8 or Rule 131(1) power to punish and that too impose punishment which can be disproportionate larger than the punishment which is already prescribed by the Legislature in its wisdom for breach of the acts, the answer would be an emphatic NO. (Para 45)

If that breach was not continuous then it may view that breach did not give any justification and/or jurisdictional authority to District Magistrate to invoke power. (Para 46)

Cases Relied on :

(1) *M/s. Khemka and Co. (Agencies) Pvt. Ltd. v. State of Maharashtra,* 1975 (2) SCC 22

(2) *Additional Collector of Customs, Calcutta v. M/s. Best & Co.*, AIR 1971 SC 170

(3) *Employees' State Insurance Corporation v. H.M.T. Ltd.*, 2008 (3) SCC 35
(4) *National Insurance Co. Ltd. v. Keshav Bahadur,* 2004 (2) SCC 370
(5) *State Bank of India v. T. J. Paul*, 1999 (4) SCC 759
(6) *Collector of Customs, Baroda v. Digvijaysinhji Spinning & Weaving Mills Ltd., Jamnagar,* AIR 1961 SC 1549
(7) *Karnataka Rare Earth v. Senior Geologist, Department of Mines & Geology,* 2004 (2) SCC 783

Cases Referred to :

(1) *Coimbatore District Central Co-op. Bank v. Employees Association,* AIR 2007 SC (Supp) 1323
(2) *Babulal Mohanlal Patel v. State of Gujarat,* 1998 (4) GCD 3090
(3) *Damoh Panna Sagar Rural Regional Bank v. Munna Lal Jain,* AIR 2005 SC 584
(4) *Allabhaksh Ismail Ebrahim v. Commissioner of Police*, 2004 (2) Mah.LJ 242
(5) *Director of Enforcement v. M/s. M.C.T. M. Corporation Pvt. Ltd.*, AIR 1996 SC 1109
(6) *Baldevbhai Ambalal Patni v. State of Gujarat*, 1987 (1) GLR 402 : 1986 GLH 1082
(7) *M/s. Sukhwinder Pal Bipan Kumar v. State of Punjab,* AIR 1982 SC 65

K. S. Nanavati, Sr. Counsel with *Nandesh Chudgar,* for Nanavati Associates, for Petitioner Nos. 1 and 2.
P. K. Jani, G.P., with *R. H. Rupareliya,* A.G.P., for Respondent Nos. 1 and 2.
Hemang H. Parikh with *Rasesh H. Parikh,* for Respondent Nos. 3 to 6.

S. R. BRAHMBHATT, J. Heard learned Advocates for the parties.

2. Rule. Learned A.G.P. waives service of notice of Rule on behalf of respondent Nos. 1 and 2 and learned Advocate Shri H. H. Parikh waives service of notice of Rule on behalf of respondent Nos. 3 to 6. Rule is fixed forthwith, at the request of learned Advocate appearing for the parties.

3. The petitioners by way of this petition have approached this Court under Arts. 226 and 227 of the Constitution of India, challenging the orders dated 2-2-2012 and 16-2-2012 passed by the District Magistrate and State of Gujarat respectively in exercise of their respective powers under Rule 131(1) of the Bombay Cinema Rules, 1954 (hereinafter referred to as the "Cinema Rules" for the sake of brevity), and Sec. 9 of the Gujarat Cinemas (Regulation) Act, 2004 (hereinafter referred to as the "Cinema Act" for the sake of brevity), where under the petitioners' licence to exhibit cinema came to be suspended with immediate effect for a period from 3-2-2012 to 2-3-2012, with copy of the order be placed in their licence file and its confirmation in appeal by the appellate authority *i.e.* State of Gujarat in

exercise of appellate powers under Sec. 9 of the Gujarat Cinemas (Regulation) Act, 2004.

4. The facts in brief leading to filing this petition, as could be culled out from the memo of petition, deserve to be set out as under for appreciating the rival contentions of the learned Counsels appearing for the parties.

5. The petitioner No. 1 is a Company registered under the Companies Act, 1956 and is engaged in the business of running a Multiplex having 6 screens at the address mentioned in the petition. The petitioner No. 2 is unit head of petitioner No. 1 and earns his livelihood through the business activities of the petitioner No. 1. The petitioner No. 2 is a citizen of India.

6. The petitioner No. 1 is a licensee for exhibiting cinemas and the licence is operational since 16-11-2011. The licence is granted on 15-11-2011. The respondent Nos. 3 to 6 are the residents of the society situated in the vicinity of the Cinema, and have been repeatedly complaining of the alleged nuisance created on account of existence of the petitioner No. 1 in the area. On account of such complaint, officers of the Entertainment Tax Department carried out surprise inspection on 21-12-2011 and it was noticed that out of six screens of the said Multiplex, on the Screen Nos. 2, 3, 4, and 5, the last show of the movie was commencing at 10-30 p.m. and in respect of screen No. 4, the last show was ending at 1.45 a.m. *i.e.* beyond the upper time limit of 00-30 a.m., this was viewed to be contrary to and in violation of the condition No. 22/24 of the licence held by the petitioner No. 1.

7. The Mamlatdar, Entertainment Tax issued notice dated 22-12-2011, cautioning the petitioner No. 1 to comply with the conditions of petitioners' licence scrupulously, as it is averred by the petitioners in the memo of the petition. They immediately started complying completely with the caution notice and it was intimated to the concerned authority under communication dated 30-12-2011. Thus, thereafter there was no violation at all on the part of the petitioners *qua* condition of clause 22/24 of the licence.

8. The petitioner No. 1 received notice dated 22-12-2011, issued by the District Magistrate, *i.e.* respondent No. 2 calling upon the petitioner No. 1 as to why the licence issued to it may not be cancelled, or suspended for violation of clause No. 22/24 of the condition of licence, as noticed during surprise inspection on 21-12-2011. The said notice was replied by the petitioner *vide* communication dated 24-1-2012/2-2-2012 and after hearing the representative of petitioner No. 1, respondent No. 2 passed an order imposing punishment of suspending the licence with immediate effect from 3-2-2012. This order was passed on 2-2-2012 in purported exercise of the power under Rule 131(1) of the Cinema Rules. This order was assailed by the petitioner by preferring appeal under Sec. 9 of the Gujarat Cinema

Act before the competent authority *i.e.* State of Gujarat. As the State of Gujarat was not deciding either the appeal or the application of staying the order, the petitioners were constrained to approach this Court by way of writ petition being Special Civil Application No. 2185 of 2012, wherein this Court (Coram : S. R. Brahmbhatt, J.) passed order on 15-2-2012 directing the respondent-State to decide the stay application or the appeal itself within stipulated time. Accordingly, the State decided it and the resultant order of 16-2-2012 came to be passed whereunder the appeal was rejected and the order of District Magistrate was confirmed on account of findings recorded that the order of punishment is absolutely just and proper looking to the admission on the part of the petitioner with regard to past breaches of terms of licence and the said breaches caused consternation to the residents of locality. Being aggrieved and dissatisfied with this order, the present petition is preferred, as stated hereinabove under Art. 226 as well as 227 of the Constitution of India.

9. Learned Counsel appearing for the petitioners contended that the impugned order of punishment is shocking and surprisingly disproportionate to the lapses alleged against the petitioners. The violation of Clause 22/24 of the term and condition of licence and exhibiting cinema few more minutes beyond the prescribed time-limit of 00-30 cannot be visited with utterly shocking and harsh punishment of suspending of licence for period of 30 days resulting into tremendous loses to the petitioners. This has effect of stopping exhibition of cinema completely for period of suspension and it ought not to have been resorted to when it was specifically brought to the notice of the District Magistrate that petitioners' competitors are running and exhibiting cinemas after 12-30 in night and this restrictions are observed in breach only yet no action was initiated against anyone of them and petitioner was chosen for inflicting such a harsh punishment. Learned Advocate for the petitioners has relied upon the following decisions :

(1) *Coimbatore District Central Co-op. Bank v. Employees Association,* AIR 2007 SC (Supp) 1323

(2) *Babulal Mohanlal Patel v. State of Gujarat,* 1998 (4) GCD 3090

(3) *Damoh Panna Sagar Rural Regional Bank v. Munna Lal Jain,* AIR 2005 SC 584

(4) *Allahbaksh Ismail Ebrahim v. Commissioner of Police*, 2004 (2) Mah.LJ 242;

and contended that the impugned orders suffer from patent illegality, and therefore, they deserve to be quashed and set aside.

10. Learned Counsel appearing for the petitioners has invited this Court's attention to memo of Appeal preferred to the appellate authority and submitted

that in Para 9(g), the petitioners have specifically averred and alleged that the respondent authority ought to have resorted to Sec. 7 of the Act, which provides for imposition of a fine of Rs. 1000/- in case of contravention of conditions and/or restrictions contained in the licence granted under the Act, and in case of continuing breach/offence, further fine which may extend to Rs. 100/- for each day; however, said provision was not resorted to, rather Sec. 8 whereby the impugned order of suspending the licence has been passed. In view of this specific averment, it was bounden duty cast upon the respondent authority at least to advert to this submission. This would show that, there was no justification of invoking of Sec. 8 of the Act or Rule 131(1) of Rules in case of the petitioners, who have not flouted the rules so gravely as to call for harsher punishment.

11. Learned Counsel appearing for the petitioners has further contended that the District Magistrate's order as well as the Appellate Authority's order were passed without considering the purport of Sec. 7, and therefore, said action of suspending of licence by way of penalty is uncalled for, as it is absolutely not permissible to District Magistrate or even to the respondent authority to resort to this Section for imposing any punishment as Sec. 7 is sufficiently clear *qua* aspect of punishment in case of breach alleged.

12. Learned Counsel appearing for petitioners contended that the power to punish, if at all, is made out from the provisions then also its flowing only from the provisions of Sec. 7 and not from any other provisions. The authorities could not have taken recourse to the provisions of Sec. 8 for imposing punishment of suspension of licence for the period of 30 days.

13. Learned Government Pleader Shri P. K. Jani with learned A.G.P. contended that plain reading of Secs. 7 and 8 of the Gujarat Cinema Act as well as Rule 131 of the Cinema Rules of 1954 would clearly show that District Magistrate has absolute power to suspend the licence by way of punishment. Therefore, when the power of suspension of licence for 30 days is exercised by District Magistrate, then, the petitioners are not justified in submitting that the power is exercised without jurisdiction.

14. Learned Government Pleader for the respondent State further contended that plain reading of the entire Section with Rules would justify action on the part of District Magistrate as well as State Authority in suspending the licence for 30 days, as otherwise, it will amount to permitting the petitioners to keep on committing breach of the terms of licence with minor penalty of Rs. 1,000/- and Rs. 100/- per day thereafter. Learned Government Pleader has also submitted that because of minor penalty, the illegality of the petitioners cannot be permitted to go on for these many days and it will not be countenanced at all and it will not serve the purpose

of statute, and therefore, the action of respondent authority cannot be said to be illegal in any manner.

15. Learned Government Pleader has further submitted that an administrative action, if challenged, then the scope of scrutiny under Art. 226 of the Constitution of India is very limited and unless and until it is established by the petitioners, that there exists any patent flaw or irregularities in observing the procedure and/or violation of principle of natural justice, Court would not interfere with the administrative action of penalising the petitioners. The fundamental principle of administrative action and judicial review is eloquently clear, and when the petitioners failed in establishing that there was any breach of any kind or decision making process was faulty in any manner than in absence of these pleadings and establishing, the scope of judicial review was not available for examining the administrative action, as it is apparent in the present case, whereunder District Magistrate has exercised his power under Rule 131(1) of suspending licence for a period of 30 days.

16. Learned Government Pleader further submitted that the petitioners have in fact admitted as could be seen from the memo of petition, *vide* their admissions dated 24-1-2012 and 22-2-2012, memo of Appeal and in this petition, that there was a breach for sometime of the term of licence, now when the petitioners have admitted their guilt and have admitted that they have committed breach of terms of licence, then, it would amount to admission of their guilt, and hence, the consequential penalty provided under the law is a natural course. Therefore, having admitted their guilt, it was not open to the petitioners to plead that they have committed such breach by mistake and other licensees are also committing the same breach. It is also submitted that petitioners have admitted violation of breach of terms of licence, and therefore, when terms of licence are breached, it would be absolutely open to the District Magistrate to take appropriate action including that of suspending licence for a particular period.

17. Learned Government Pleader further stated that action of District Magistrate was absolutely just and proper and do not call for any interference, as it was open to the District Magistrate either to cancel the licence completely, which would have worked untold hardship upon the petitioners, and therefore, when the District Magistrate has chosen to inflict lesser punishment for suspension of licence for a period of 30 days, in that case, the said order cannot be said to be unreasonable, and therefore, this Court may not interfere with the said finding under Art. 226 of the Constitution of India.

18. It is also submitted that when the breach of licence is admitted and that breach is being viewed by the concerned District Magistrate, justifying imposing of punishment of suspension of licence for a period of 30 days,

and therefore, even the Appellate Authority has also while recording its reasons, upheld the same. The reasonableness of passing this order itself should be sufficient to persuade this Court for rejecting this matter.

19. Learned Government Pleader for the respondent-State invited this Court's attention to the decision of the Apex Court in case of *Director of Enforcement v. M/s. M.C.T. M. Corporation Pvt. Ltd.*, reported in AIR 1996 SC 1109 and submitted that the observations of the Apex Court in respect of exercise of powers in the event of breach of civil obligation, entailing the consequence of penalty, need not require to be supported with *'Mens Ria'* and the absence of *mens ria*, would in itself is not sufficient to vitiate the imposition of penalty, and therefore, this judgment would support the action of District Magistrate in ordering suspension of licence for a period of 30 days as the petitioners themselves have admitted the breach of terms of licence on their part.

20. Learned Government Pleader for the State thereafter invited this Court's attention to the decision cited at bar by the learned Counsel for the petitioners in case of *Allahbaksh Ismail Ebrahim v. Commissioner of Police*, reported in 2004 (2) Mah.LJ 242 and submitted that the power of suspension of licence in a given case may cause a penal consequence, but that in itself would not be only on that account be treated as bad in eye of law.

21. Learned Government Pleader for respondent State further submitted that Secs. 7 and 8 and Rule 131(1) of the Rules are operative in a altogether different fields and powers conferred under Sec. 8 of the Act are sufficient for enabling the District Magistrate to order suspension on account of breach. Once the breach is admitted for as many as for 34 days, then the imposition of punishment instead of cancelling the licence cannot be said to be without jurisdiction or dis-proportionate, and therefore, same is required to be upheld and no interference is required to be called for by this Court.

22. Learned Government Pleader appearing for respondent State has also invited this Court's attention to the judgment in case of *Baldevbhai Ambalal Patni v. State of Gujarat*, reported in 1986 GLH 1082 : [1987 (1) GLR 402] and emphatically relied upon the observations of this Court in Paras 4 and 6 and contended that the Division Bench has also observed that if licence is suspended for the contingency narrated, then, the same cannot be found fault with.

23. The learned Government Pleader further contended that if one reads any restrictions upon District Magistrate in imposing punishment for breach of any term of licence on account of provisions of Sec. 7 and one expects that suspension as envisaged under Sec. 8 cannot be resorted to unless and until the prosecution is lodged and conviction is pronounced than it would render Sec. 8 provision nugatory.

24. Shri Parikh, learned Advocate appearing for respondent Nos. 3 to 6 contended that the citation in case of *Allahbaksh Ismail Ebrahim* (supra) is absolutely applicable to the facts and circumstances of the present case as there is breach of civil obligation and the punishment is required to be imposed in consequence thereof. And that judgment is squarely applicable so far as present petitioners are concerned, and therefore, this judgment is absolutely applicable to the facts of present case.

25. Shri Parikh, learned Advocate has also invited this Court's attention to provisions contained in Rules 131(1) to 131(3) to indicate that all these three provisions operate in an independent environment, and therefore, when it is clearly provided under the Act, and also under the Rules for suspension or revocation of licence for breach of the term of the licence then the power exercised by the respondent-State authorities cannot be said to be illegal or arbitrary.

26. The learned Advocate Shri Parikh contended that the Legislature, in its wisdom provided a situation under Rule 131(1), whereunder the notice is required to be issued to the concerned licensee before taking action, whereas, in case of applicability of Rule 131(2), the procedure is prescribed, which is different and similar in nature and absolute power is conferred upon the District Magistrate in a situation where he has to exercise power under Rule 131(3), which operates with *non-obstante clause*. Therefore, complete reading of these three provisions would persuade this Court to hold that licence could be suspended by way of penalty also by imposing penalty of suspension for a particular period. The District Magistrate is not required to lodge any prosecution as envisaged under Sec. 7 or under Rule 130C of Cinema Rules of 1954 and submitted that the authorities below have passed legal and proper order and petition deserves to be dismissed and no interference of this Court is called for.

27. The learned Advocate Shri Parikh further contended that plain reading of the relevant rules and Sections do not suggests that District Magistrate cannot suspend the licence on account of any breach of its conditions by the licence. In fact, Sec. 7 and Rule 130C operates in different fields and Sec. 8 and Rule 131(1). The provisions of imposing punishment as per Sec. 7 or Rule 130C cannot be held to be a restriction upon the District Magistrate power to impose appropriate punishment of suspending licence for admitted breach and it need not be continuous breach sought to be canvassed on behalf of the petitioners. The plain reading and use of term "contravention" as such do not envisage any continuous breach on the part of the licensee for being visited with suspension of licence by the District Magistrate.

28. The Court has heard learned Advocates for the parties and perused the impugned orders. Before adverting to the contentions of learned

Advocates, it is expedient hereinbelow to set out few indisputable aspects emerging therefrom, namely :

(1) The petitioner No. 1 is holding valid licence to exhibit cinema. This licence is suspended by the District Magistrate for period of 30 days from 3-2-2012 to 2-3-2012.

(2) The petitioners have admitted that for a period of 35 days in some screens cinema was exhibited beyond the time-limit in ending the show, but as soon as they were visited with surprise inspection and after receiving the caution notice from the office of Tax Mamlatdar, they stopped this and thereafter there is no complaint whatsoever in respect of breach of Condition No. 22/24 of the licence.

(3) The caution notice issued by Tax Mamlatdar is admittedly subsequent to the surprise inspection carried out on 21-12-2011.

(4) It is also not disputed that the petitioners are under restrictions that they cannot exhibit cinema after 00-30 in night. This being a term of the licence they are supposed to observe it scrupulously.

(5) The petitioners themselves have admitted that on account of general practice adopted by their competitors of exhibiting cinemas well beyond the upper time limit, they being new player in the field, they also followed it inadvertently thinking that such minor deviation of exhibiting cinema 15 minutes beyond the upper time limit would not entail dire consequences from respondent authorities.

(6) The Court called upon learned Government Pleader to take instruction from the concerned officer present in the Court as to whether since 1954 till hearing of this matter, is any cinema licence been ever suspended by way of punishment? The answer came that except in case of one cinema house "Shital Cinema" in which the licence was cancelled, but no action of punishment was ever taken. This was as per the instruction and this in turn was given to him from the recollection of the officer concerned, and it may not be taken as absolute truth also. But the fact remains to be noted that despite specific query not a single incident was pointed out during hearing of the matter which is going on since last three days continuously.

(7) The notice dated 20-1-2012 in terms calls upon the petitioner to show cause for their past breaches of exhibiting cinema beyond the time prescribed for exhibition. The notice and its simple reading suggests that at the time of issuance of notice the petitioners were in fact not in any breach of term of licence, nor were they exhibiting cinema beyond the time-limit prescribed. In other words the District Magistrate ('D.M.') called upon the petitioners to show cause as to why their licence may

not be suspended and or cancelled on account of their past breaches of exhibiting cinema beyond the time-limit prescribed and as per their own admission and *panchnama* which was drawn on 21-12-2011 during surprise checking visit.

(8) The petitioners pointed out to concerned D.M. that petitioners were under an impression that as other competitors were also exhibiting cinema beyond the time-limit prescribed, it was thought by them to be permissible or deviation not likely to entail serious consequences, and therefore, they committed this mistake and after receiving caution notice from Tax Mamlatdar they have never committed said mistake.

(9) The D. M. has, right on the very same day passed order of punishment supending the licence *w.e.f.* from 3-2-2012 to 2-3-2012 *vide* order dated 2-2-2012.

(10) This order was assailed by the petitioners by preferring appeal, wherein also specific ground is taken by the petitioners that punishment as prescribed under Sec. 7 of the Cinema Act is far lighter than the punishment imposed by the D.M., which in fact causes tremendous loss to the petitioners, and therefore, that punishment could not have been imposed.

(11) The concerned authority *i.e.* Appellate authority of the State has not adverted to this aspect at all as the entire order is silent *qua* this submission, or rather it has gone ahead with justifying the order passed by D.M., on the ground that punishment imposed by D.M., is commensurate with the offence committed. When the offence is committed then the consequent loss of revenue to the State is insignificant. The public at large and their consternation is of paramount importance, and therefore, the punishment which could have been inflicted legally of cancellation of licence is not inflicted but punishment only of suspending licence for a period of 30 days is imposed which is justified in any way. Therefore, the order is upheld and appeal is rejected.

Against the aforesaid indisputable factual backdrop, a question arises as to whether the impugned order passed by the District Magistrate in exercise of the power under Rule 131(1) of the Cinema Rules, 1954, and the order passed by the Controlling Authority confirming the same were justified in light of the statutory provisions under which the orders are passed.

29. At this stage Shri Parikh for the respondent Nos. 3 to 6 with the permission of the Court cited decision in case of *M/s. Sukhwinder Pal Bipan Kumar v. State of Punjab,* reported in AIR 1982 SC 65, and invited this Court's attention to the observation made in Para Nos. 7, 8, and 9 and contended that the power exercised by the District Magistrate and order

impugned, therefore, cannot be said to be alien to the exercise of the power expressly conferred upon them by the concerned rules and statute. Therefore, in light of this ratio also the orders could be said to be absolutely just and proper.

30. This submission is made amidst dictation, therefore, the Court proposes to advert to it at an appropriate place hereafter in this judgment.

31. The plain reading of the order impugned coupled with the notice imminently go to show that the D.M. has inflicted punishment upon the petitioners. The order of punishment is passed for the petitioners' offence of exhibiting cinema beyond upper time-limit. The notice and order even ostensibly also not indicate anywhere that it was passed for restricting any continuing breach or nuisance or for restricting any imminent danger to public life or safety. But it was issued only for punishing petitioner. Now, the power to punish is absolutely alien so far as the proceedings are concerned, and therefore, in my view District Magistrate did not have jurisdictional facts which would have clothed him with power to issue even notice of show cause which he has issued on 20-1-2012.

32. The power of suspending licence as envisaged under Sec. 8 or for that matter under Rule 131(1) is the power to be understood in a manner in which it is to be exercised. This power to suspend licence cannot be equated with powers to suspend licence by way and as punishment. The power of suspension of licence by way of punishment can never be read into these provisions, and if it was so, nothing prevented the Legislature from specifically spelling it out in the very provision itself. In fact the powers of suspension of licence as provided under Sec. 8 of the Cinema Act and Rule 131(1) of the Cinema Rules is for an exigency which would warrant such suspension on account of the telling and compelling reasons. The Legislature has, therefore, rightly not cribbed, confined or circumscribed this power in any manner by even providing any guidelines or eventualities or by providing any maximum time-limit of suspension of licences. The only safeguard is that of providing an opportunity to the concerned before ordering suspension of the licence for the compelling reasons. Thus, when the D.M. intends to exercise these powers under Sec. 8 or Rule 131(1) then he has issue to be satisfied that show-cause notice calling upon the licencee as to why his licence may not be suspended on account of reasons stated therein which would on the face of it justify such suspension. In other words, the power to suspend is to be exercised only for arresting or controlling situation or restricting happening warranting suspension of licences irrespective of the fact that licensee may be or may not be responsible for such happening. The exercise of power of suspension of licence as envisaged under Sec. 8 or Rule 131(1) is merely power enabling

the D.M. to suspend the licence for valid reason for averting or restricting and for overcoming an eventuality but it does not envisage that it could be used as punishment as a special provision is made in form of Sec. 7 and Rule 130C for imposing punishment for breach of the licence. At this stage, it is absolutely just and proper to set out provisions of Sec. 7, Sec. 8 of the Cinemas (Regulation) Act, and Rule 130C and Rule 131 of Cinema Rules for its appropriate appreciation :

"Sec. 7. If the owner or person in charge of a cinematography uses the same or allows it to be used, or if the owner or occupier of any place permits that place to be used, in contravention of the provisions of this Act or of the Rules made thereunder, or of the conditions and restrictions upon or subject to which any licence has been granted under this Act or if the owner or persons in charge of a cinematograph contravenes any of the conditions or restrictions imposed by an order of exemption made under Sec. 13, he shall on conviction, be punished with fine which may extend to one thousand rupees and in the case of a continuing offence with a further fine which may extend to one hundred rupees for each day during which the offence continues after conviction for the first such offence."

"Sec. 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 Sec. 13, or in the event of his conviction of an offence under Sec. 7 of this Act or Sec. 7 of the Cinematgograph Act, 1952, the licensing authority 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."

"Rule 130C. *Penalty for failing to comply with or contravening the provisions of rules :-* Any person failing to comply with or contravening the provisions of any of these Rules shall on conviction be punished with fine which may extend to one thousand rupees."

"Rule 131. *Suspension or cancellation of Licences :-* (1) The Licensing Authority may suspend or cancel any licence granted under these Rules for contravention of any of these Rules for the conditions of the licence granted under these Rules provided that the Licensing Authority shall give the licensee an opportunity to show cause before taking any action under this sub-rule."

Thus, on plain reading of Sec. 7 it can well be said that the power to punish for breach of condition of licence is clearly provided and, therefore, that Section has taken care of breaches which are thought fit to be entailing or visiting with punishment at all.

33. It is important to note that the licence to exhibit cinema is governed by the Gujarat Cinema Act, 2004, and Secs. 7 and 8 reproduced hereinabove are the essential Sections which come into play for understanding and appreciating the purport of the power. Section 7 of the Act is eloquently clear and absolutely unambiguous with regard to its purport, arena and applicability. Section 7 runs under the caption "*Penalty For Contravention*". In that very Section the Legislature has encompassed the instances, eventualities and deviation warranting imposition of punishment or penalty. The entire Gujarat Cinema Act is conspicuously silent *qua* the aspect of punishment on eventuality of contravention of terms of licence and or contravention of statutory provision anywhere except in Sec. 7. In other words Sec. 7 is the only Section in the entire Act which can be said to be permitting concerned authority to impose penalty and or punishment for the contravention and the eventualities mentioned thereunder. In a rule of law which is enshrined very firmly in our constitutional pattern, it would be absolutely impermissible to envisage power to penalise and punish flowing merely from executive fiat and or left to the administrative authorities without there being any proper guidance *qua* its quantum. It is furthermore required to be noted that the events, contravention of the terms of licence and the eventualities warranting imposition of punishment as per the penal provision and exposing the licencee and or others to liable to be punished are required to be specifically mentioned and enlisted in the statutory provision and accordingly they have been in fact embedded in form of provision of Sec. 7 and or Rule 130C. Therefore authorities like District Magistrate or State cannot invoke any other provisions like provisions of Sec. 8 or Rule 131(1) for punishing a licencee for breach of the term of licence. It is puerile to say that Sec. 8 permits cancellation and or suspension of licence in the event of breach of the term of licence, and therefore, that power could be invoked for inflicting penalty for deviation or breaches in the terms of licence even though the penalty or punishment, therefore, is enlisted under Sec. 7 or Rule 130C and suspension by way of punishment is not finding its place thereunder. Such a simplistic approach is required to be discarded on account of it being contrary to scheme of statute and principle of Administrative Law in which Legislature will never leave power to punish, without giving prescribing upper limit or maximum quantum, to the executive discretion in our system of law. The licensees are aware that in the event of any breach of the term of licence the punishment or penalty is prescribed under Sec. 7 and hence no other penalty or punishment could be legally imposed upon the deviant licensee.

34. Rule 130C of the Cinema Rules, 1954 as set out hereinabove would also show that this rule is similar to Sec. 7. Meaning thereby in case if the penalty and or punishment is required to be imposed upon anyone including

the licensee under the Rules, then, the Rule as provided under Rule 130C is the only provision which could be invoked. The moment authority talks about punishment then, it has to be guided by the legislative intent and purport and freedom embedded only in Sec. 7 of the Act and Rule 130C of the Rules. Except these two provisions any action which is in penal in nature and which is not otherwise not supported by any provisions at all, cannot be resorted to under the spacious provision of Sec. 8 or Rule 131(1) of the Cinema Rules.

35. The question arises as to whether the provision of Sec. 8 and Rule 131(1) wherein the licensing authority and/or D.M. has power to suspend licence can be construed as provisions empowering the District Magistrate to impose punishment, the answering is an emphatic 'NO'. On plain reading of this provision one could easily understand that this suspension is not prescribed as a suspension by way of penalty or punishment. It is well known principle in administrative law that suspension could be either by way of penalty, punishment or by way of restricting something from continuing or recurring. The authority granting the licence has powers to either revoke it or suspend it for the reasons irrespective of licensee's right or fault, but this power cannot be equated with power to inflict suspension by way of punishment alone when the statute or rules do not provide punishment by way of suspension and the list of punishment does not include suspension as one punishment. The power to suspend for restricting any activity or for stopping something happening cannot be construed as power also to suspend by way of punishment if such punishment does not form part of list of punishment provided under the rules or statute. The interpretation of Sec. 8 of the Act as well as Rule 131(1) of the Rules and suspension therein can never be construed as empowering D.M. To invoke those provisions for inflicting punishment of suspension for a limited period. Had it been so, it would amount to provide unbridled discretion in D.M. to ignore Rule 130C and Sec. 7 which admittedly provide very lighter punishment for same breaches and imposed greater punishment for the same breach by resorting to Sec. 8 or Rule 131(1) which cannot be the legislative intent at all. Therefore, I am of the clear opinion that the power to suspend by way of punishment of licene is not envisaged or provided or construed from the provision of Sec. 8 as well as Rule 131(1) of the Rules.

36. The provisions of Sec. 8 as well as Rule 131(1) to be treated as providing for suspension by way of punishment also than non-prescribing of the maximum limit for which suspension could be ordered by way of punishment would leave absolute discretion rendering it contrary to the very fundamental principle of not clothing administration and executives with absolute power without any guidance to in form of upper limit or maximum

limit. Such an interpretation of provisions of Sec. 8 and Rule 131(1) would act as unbridled power in executive which can never be attributed to Legislative intent in our system of rule of law which were wedded to. Therefore even on this count also when there is no maxima provided or suspension of licence by way of punishment it can be said that it is left to the authority, as no punishment could be left to the authority without there being maxim provided by rule making authority and or legislative power. Therefore, from this angle also one can say that in absence of any provision of maximum period for suspension of licence it can be said that suspension of licence cannot be said to be by way of punishment nor Sec. 8 and Rule 131(1) be treated as enabling provision which would enable the D.M. to provide suspension of licence by way of punishment.

37. The fundamental principle of Administrative Law with regard to discretion of the authorities under the rules and its exercise is absolutely clear. The Apex Court has in case of *M/s. Khemka & Co. (Agencies) Pvt. Ltd. v. State of Maharashtra,* 1975 (2) SCC 22 has specifically held as under :

> "2. The Central Act states Sec. 9(1) that the tax payable by any dealer under the Central Act on sales of goods effected by him in the course of inter-State trade or commerce shall be levied by the Government of India and the tax so levied shall be collected by that Government in accordance with the provisions of sub-sec. (2) in the State from which the movement of goods, commenced.
>
> 2.(a) Section 9(2) of the Central Act is as follows :-
>
> "Subject to the other provisions of this Act and the Rules made thereunder, the authorities for the time being empowered to assess, reassess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, re-assess, collect and enforce payment it of tax, including any penalty, payable by a dealer under this Act as if the tax or penalty payable by such a dealer under this Act is a tax or penalty payable, under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, refunds, rebates, penalties, compounding of offences and treatment of documents furnished a dealer as confidential shall apply accordingly : Provided that if in any State or part thereof there is no general sales

tax law in force, the Central Government, may, by rules made in this behalf make necessary provision for all or any of the matters specified in this sub-section."

3. Section 6 of the Central Act provides for liability to tax on inter-State sales. Section 8 of the Central Act provides for rates of tax on sales in the course of inter-State trade or commerce. Section 9 of the Central Act provides for collection of tax and penalties.

4. Section 10 of the Central Act provides penalties. The various grounds for penalties are fully enumerated there. Section 10A(1) of the Central Act provides for imposition of penalty *in lieu* of prosecution.

5. The contention on behalf of the assessee is that there is no provision in the Central Act for imposition of penalty for delay or default in payment of tax, and therefore, imposition of penalty under the provisions of the State Act for delay or default in payment of tax is illegal.

6. The rival contention on behalf of the Revenue is that the provision for penalty for default in payment of tax as enacted in the State Act is applicable to the payment and collection of the tax under the Central Act and is incidental to and part of the process of such payment and collection.

8. The contentions of the Solicitor-General are these : Section 9(1) of the Central Act speaks of tax. That Section does not mention penalty.

Tax will include collection and enforcement of payment. The words "tax and penalty payable by a dealer under this Act" indicate that the words "under this Act" in the Central Act relate only to a dealer. Section 9(2) of the Central Act is a provision prescribing the procedure for assessing, collecting and enforcing payment of tax. The words "collect and enforce payment of tax, including any penalty" in Sec. 9(2) of the Central Act include not only penalties imposed by the Central Act but also penalties under the State Act. The words 'as if the tax or penalty payable by such a dealer under this Act is a tax or penalty payable under the general sales tax law of the State" indicate that tax or penalty is imposed by the Central Act and by incorporating the State Act as a part of the Central Act the liability to pay tax is enforced by penalty for delay or default in payment of tax.

9. The Solicitor-General further submitted as follows : The latter part of Sec. 9(2) of the Central Act, *viz.*, "for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law..... shall apply accordingly" shows that the enforcement provisions in the State Act for delay or default in payment of tax are adopted by the Central Act for working out the provisions relating to assessment, re-assessment, collection and enforcement of tax or penalties. Penalty is a sanction for non-payment. If the assessee does not pay and if there is no provision for imposition penalty, there will be no sanction for enforcement of payment. The purpose for which the State Act is incorporated in the Central Act is, *inter alia,* enforcing payment of tax

which includes penalty for delay and default in payment of tax. In short, just as penalty is imposed for non-payment of tax under the State Act that provision is attracted for delay or default, in payment of tax under the Central Act.

10. On behalf of the assessee it was said that the provisions contained in Sec. 9(2) of the Central Act mean that only if tax as well as penalty is payable by a dealer under the Central Act then there can be collection and enforcement of tax and penalty in the same manner as provided in sales-tax law of the State. Second, the Central Act must have a substantive provision to warrant imposition of penalty. The provision in a State Act regarding penalty for default in payment cannot be applied when there is no substantive provision relating to levy or penalty in the Central Act in respect of that default. Third, Sec. 9(2) of the Central Act is procedural and only deals with utilisation of existing machinery in State law. The State authorities are empowered to exercise powers under the general sales tax law of the State to assess, re-assess, collect and enforce payment of tax and penalty payable under the Central Act. Just as tax payable under the Central Act can be collected and enforced, similarly only penalty payable under the Central Act can be collected and enforced.

16. The deeming provision in the Central Act that the tax as well as penalty levied under the Central Act will be deemed as if payable under the general sales tax law of the State cannot possibly mean that tax or penalty imposed under any State Act will be deemed to be tax or penalty payable under the Central Act. The entire authority of the State machinery is that "for this purpose" meaning thereby the purpose of assessing, re-assessing, collecting and enforcing payment of tax including any penalty payable under the Central Act, they, meaning the State agencies, may exercise powers under the general sales tax law of the State. The words "for this purpose" cannot have the effect of enlarging the content of tax and the content of penalty payable under the Central Act. Liability to pay tax as well as liability to pay penalty is created by the Central Act. One of the reasons why tax as well as penalty is the substantive provision in the Central Act and is not incorporated by reference to the State Act is illustrated by the history of Sec. 9(2) of the Central Act. The present Sec. 9(2) of the Central Act was formerly Sec. 9(3) of the Central Act. The Madras High Court in *D. H. Shah & Co.'s case* pointed out that the imposition of penalty under Sec. 12(3) of the Madras Act, 1959 could not be attracted for levy of penalty. The Madras High Court gave the reason that then Sec. 9(3) of the Central Act only adopted the procedure of the State Act for assessment, re-assessment, collection and enforcement of tax as well as penalty payable under the Central Act.

20. This Court in *Orissa Cement Limited v. State of Orissa,* 27 STC 118 considered whether rebate provided in Sec. 13(8) of the Orissa Sales Tax Act was available to dealers if they paid the tax under the Central Act before the due date of payment. It may be, stated that at the relevant time

of the decision in the *Orissa Cement case* (supra) the provisions contained in the then Sec. 9(3) of the Central Act stated *inter alia* that "the provisions of such law including the provisions relating to returns, appeals, reviews, revision, references, penalties and compounding of offences shall apply accordingly," and the word "rebate" did not occur there. This Court said that rebate for payment it of tax within the prescribed time under the State Act was, available to dealers for payment of tax under the Central Act on the reasoning that the power to collect the tax assessed in the same manner as the tax on the sale and purchase of goods under the general Sales Tax law of the State would include within itself all concessions given under the State Act for payment within the prescribed time. The reason why rebate is allowed and penalty is disallowed is that rebate is a concession whereas penalty is an imposition. The concession does not impose liability but penalty does. It, therefore, stands to reason that rebate is included within the procedural part of collection and enforcement of payment. Penalty like imposition of tax cannot be included within the procedural part.

24. Penalty is not merely sanction. It is not merely adjunct to assessment. It is not merely consequential to assessment. It is not merely machinery. Penalty is in addition to tax and is a liability under the Act. Reference may be made to Sec. 28 of the Income Tax Act, 1922 where penalty is provided for concealment of income. Penalty is in addition to the amount of income-tax. This Court in *Jain Brothers v. Union of India,* 77 ITR 107 said that penalty is not a continuation of assessment proceedings and that penalty partakes of the character of additional tax.

25. *The Federal Court in* Chatturam v. Commissioner of Income Tax, Bihar, *15 ITR 302 said that liability does not depend on assessment. There must be a charging Section to create liability. There must be, first a liability created by the Act. Second, the Act must provide for assessment. Third, the Act must provide for enforcement of the taxing provisions. The mere fact that there is machinery for assessment, collection and enforcement of tax and penalty in the State Act does not mean that the provision for penalty in the State Act is treated as penalty under the Central Act. The meaning of penalty under the Central Act cannot be enlarged by the provisions of machinery of the State Act incorporated for working out the Central Act.*

27. For the foregoing reasons, we are of opinion that the provision in the State Act imposing penalty for non-payment of income-tax within the prescribed time is not attracted to impose penalty on dealers under the Central Act in respect of tax and penalty payable under the Central Act. There is no lack of sanction for payment of tax. Any dealer who would not comply with the provisions for payment of tax, would be subjected to recovery proceedings under the Public Demands Recovery Act. A penalty is a statutory liability. The Central Act contains specific provisions for penalty. Those are the only provisions for penalty available against the dealers under the Central Act. Each State Sales Tax Act contains provisions for penalties. These provisions in some cases are also for failure to submit return or failure to

register. It is rightly said that those provisions cannot apply to dealers under the Central Act because the Central Act makes similar provisions. The Central Act is a self-contained Code which by charging Section creates liability for tax and which by other Sections creates a liability for penalty and impose penalty. Section 9(2) of the Central Act creates the State authorities as agencies to carry out the assessment, reassessment, collection and enforcement of tax and penalty by a dealer under the Act.

37. *On a consideration of the provisions mentioned above, it seems to me to be clear that whatever may be the objects of levying a penalty, its imposition gives rise to a substantive liability which can be viewed either as an additional tax or as a fine for the infringement of the law.*

The machinery or procedure for its realisation comes into operation after its imposition. In any case, it is an imposition of a pecuniary liability which is comparable to a punishment for the commission of an offence. It is a well settled cannon of construction of statutes that neither a pecuniary liability can be imposed nor an offence created by mere implication. It may be debatable whether a particular procedural provision creates a substantive right or liability. But, I do not think that the imposition of a pecuniary liability, which takes the form of a penalty or fine for a breach of a legal obligation, can be relegated to the region of mere procedure and machinery for the realisation of tax. It is more than that. Such liabilities must be created by clear, unambiguous, and express enactment. The language used should leave no serious doubts about its effect so that the persons who are to be subjected to such a liability for the infringement of law are not left in a state of uncertainty as to what their duties or liabilities are. This is an essential requirement of a good Government of laws. It is implied in the constitutional mandate found in Sec. 265 of our Constitution : "No tax shall be levied or collected except by authority of law".

44. *After considering the provisions of the Central Act as well as the State Acts relating to penalties, one is irresistibly driven to the conclusion that provisions relating to penalties are special and specific provisions in each Act. They are not part of "the General Sales Tax Law". Of either the State or of the Union. If the provisions relating to penalties, such as those found in the Central Act and the State Acts, are really special provisions which can be invoked in the special circumstances given in each statute, we must interpret the reference to penalties in the concluding portion of Sec. 9(2), proceeding the proviso, to relate only to the special provisions relating to penalties provided for specifically in the Central Act.*

45. *I think that the maxim of interpretation to apply here is :* "Expressio Unius exclusio alterius". *This is explained as follows in* Maxwell on the Interpretation of Statutes (12th. Edn. page 293) :

> "*By the rule usually known in the form of this Latin Maxim, mention of one or more things of a particular class may be regarded as silently excluding all other members of the class;* expressum facit cessare tacitum."

46. *No doubt this maxim has been described as* "a useful servant but a dangerous master". *I can, however, think of no kind of case more apt for its application than the one before us. As the Privy Council said long ago, with regard to a statute purporting to impose a charge in* Oriental Bank Corporation v. Wright, *(1) that in such a case, the rule to be applied is "that the intention to impose a charge upon the subject, must be shown by clear and unambiguous language". If the language leaves room for coming to the conclusion that only penalties specified in the Central Act are enforceable by the machinery for enforcement of liability under the General Sales Tax law of a State, I think that the legislative intent could safely be presumed to be to confine penalties mentioned in the concluding part of Sec. 9(2) to only those mentioned specifically in the Central Act."*

(Emphasis supplied)

Thus from the aforesaid discussions it is very clear that the power to impose penalty is required to be expressly provided for and in absence thereof no penalty or punishment could be imposed. As in the aforesaid set of facts the Apex Court held that by resorting to general provision of Central Sales Tax Act the authority was not entitled to penalise as recovering of penalty was not provided under Central Sales Tax Act. In other words, the ratio laid down by Apex Court is that the penalty or punishment are to be provided for in an unequivocal terms and then only same could be exercised. In the instant case, the District Magistrate has invoked Rule 131(1) of Cinema Rules which in my view did not empower him to suspend the license by way of punishment. The suspension of licence by way of punishment can never be read into provision of Rule 131(1) of the Cinema Rules, 1954. In absence thereof the suspension provision which is admittedly not resorted to arrest or continuous breach or for public interest or for suspending any continuous nuisance can never be imposed by invoking Rule 131(1) of the Cinema Rules.

38. The Apex Court has in case of *Additional Collector of Customs, Calcutta v. M/s. Best & Co.*, reported in AIR 1971 SC 170 has observed as under :

"9. The view was reiterated by this Court in *Boothalinga Agencies v. V.T.C. Poriaswami Nadar*, 1969 (1) SCR 65 : AIR 1969 SC 110. These cases were decided on the interpretation of Sec. 5 of the Imports and Exports (Control) Act, 1947, as it stood before it was amended by Act 4 of 1960. By the Imports and Exports (Control) Amendment Act (4 of 1960). In Sec. 5, after the words "any order made or deemed to have been made under this Act", the words "or any condition of a license granted under any such order" were inserted. Contravention of any condition of a licence granted under any order was, therefore, liable to be punished under Sec. 5 as amended.

10. In the present case, the Customs authorities did not direct prosecution for contravention of any condition of a licensee : they directed confiscation

of the machinery and imposed penalty in lieu thereof. But on the terms of Sec. 5 as amended, the right to impose penalty for contravention of any condition of a licence may be exercised under the Sea Customs Act, 1878, and not under the Imports and Exports (Control) Act, 1947. For breach of any condition of a licence it is open to the authorities to direct prosecution, but no order confiscating goods and imposing penalty in lieu thereof could be made. The order of confiscation could only be made under Sec. 167 Clause 8 of the Sea Customs Act, 1878 : in terms Clause (8) of Sec. 167 provides for confiscation of the goods importation or exportation of which is for the time being prohibited or restricted by or under Ch. IV of the Sea Customs Act, 1878. The notification of which the contravention is said to have been made, is not issued under Sec. 19 of the Sea Customs Act, but under the Imports and Exports (Control) Act, 1947. It has not been urged before us, and rightly, that penalty of confiscation is incurred under the provisions of the Sea Customs Act, 1878, for breach of the conditions of the licence.

11. In our judgment, the High Court was right in holding that the scope of power under the Sea Customs Act was not enlarged by the amendment to Sec. 5 of the Imports and Exports (Control) Act, and there is nothing in the amended Sec. 5 of the Imports and Exports (Control) Act which warrants the view that the provisions invoked to punish the breach of a condition of a licence granted under the Imports and Exports (Control) Act, 1947."

39. The Apex Court has in case of *Employees' State Insurance Corporation v. H.M.T. Ltd.,* reported in 2008 (3) SCC 35, has observed as under :

"16. It is a well-known principle of law that a subordinate legislation must conform to the provisions of the Legislative Act. Section 85B of the Act provides for an enabling provision. It does not envisage mandatory levy of damages. It does not also contemplate computation of quantum of damages in the manner prescribed under the Regulations.

18. Section 85B of the Act uses the words "may recover". Levy of damages thereunder is by way of penalty. The Legislature limited the jurisdiction of the authority to levy penalty *i.e.* not exceeding the amount of arrears. Regulation 31C of the Regulations, therefore, in our opinion, must be construed keeping in view the language used in the legislative Act and not *de hors* the same."

40. The Apex Court in case of *National Insurance Co. Ltd. v. Keshav Bahadur*, reported in 2004 (2) SCC 370, has observed as under :

"13. Though Sec. 110CC of the Act (corresponding to Sec. 171 of the new Act) confers a discretion on the Tribunal to award interest, the same is meant to be exercised in cases where the claimant can claim the same as a matter of right. In the above background, it is to be judged whether a stipulation for higher rate of interest in case of default can be imposed

by the Tribunal. Once the discretion has been exercised by the Tribunal to award simple interest on the amount of compensation to be awarded at a particular rate and from a particular date, there is no scope for retrospective power in this regard can be culled out from Sec. 110CC of the Act or Sec. 171 of the new Act. Such a direction in the award for retrospective enhancement of interest for default in payment of the compensation together with interest payable thereon virtually amounts to imposition of penalty which is not statutorily envisaged and prescribed. It is, therefore, directed that the rate of interest as awarded by the High Court shall alone be applicable till payment, without the stipulation for higher rate of interest being enforced, in the manner directed by the Tribunal."

41. The Apex Court in case of *State Bank of India v. T. J. Paul*, reported in 1999 (4) SCC 759, has observed as under :

"18. But this does not conclude the matter. The learned Senior Counsel for the respondent, Shri P. P. Rao is right in contending that the appellate authority, once it came to the conclusion that the punishment of dismissal was not warranted in the facts of the case, it could not have awarded the punishment of "removal" which was not one of the enumerated penalties under Para 22(v) of the Rules. In fact, the learned Single Judge also adverted to this aspect. If one reads the order of the appellate authority, it is clear that the said authority went by Rule 49(g) of the State Bank of India (Supervising Staff) Service Rules which admittedly, is not applicable to charges pertaining amalgamation of Bank of Cochin with State Bank of India took place only for a punishment of removal, but in the rules relating to penalties for "major misconduct" in Para 22(v) of the rules applicable to the employees of Bank of Cochin, removal is not one of the enumerated punishments which could be imposed. The said punishment is not the same thing as "condoning misconduct and merely discharging from service" as provided in Para 22(v)(e) of the said Rules.

19. Learned Senior Counsel for the appellants, Shri T. R. Andhyarujina tried to submit that if the appellate authority decided not to dismiss the respondent, it still had inherent power to award a punishment of "removal", which was lesser in severity. Learned Senior Counsel contended that the direction of the authorities is to award such an appropriate punishment could not be interfered with in view of the decision of this Court in *Union of India v. G. Ganayutham*, 1997 (7) SCC 463. In our view, this decision is not applicable to the facts of the case. Here the Court is not interfering with the punishment awarded by the employer on the ground that in the opinion of the Court the punishment awarded is disproportionate to the gravity of the misconduct. Here, the gradation of the punishment has been fixed by the rules themselves, namely the rules of Bank of Cochin and the Court is merely insisting that rules. Inasmuch as the rules of Bank of Cochin have enumerated and listed out the punishment for "major misconduct", we are of the view that the punishment of "removal" could not have been imposed by the appellate authority and all that was permissible for the Bank was

to confine itself to one or the other punishment for major misconduct enumerated in Para 22(v) of the Rules, other than dismissal without notice. This conclusion of ours also requires the setting aside of the punishment of "removal" that was awarded by the appellate authority. Now the other punishments enumerated under Para 22(v) are "warning or censure or adverse remark being entered, or fine, or stoppage of increments/reduction of basic pay or to condone the misconduct and merely discharge from service". The setting aside of the removal by the High Court and the relief of consequential benefits is thus sustained. The matter has, therefore, to go back to the appellate authority for considering imposition of one or the other punishment in Para 22(v) other than dismissal without notice."

42. The Apex Court in case of *Collector of Customs, Baroda v. Digvijaysinhji Spinning & Weaving Mills Ltd.*, *Jamnagar*, AIR 1961 SC 1549, has observed as under :

"(4) To appreciate the rival contentions and to provide a satisfactory solution to the problem presented it is necessary to read the relevant provisions of the Act, not only to understand the scheme of the Act, but also to construe the provisions of Sec. 193 thereof in the light of the scheme disclosed by the said provisions. It is one of the well established rules of construction that "if the words of a statute are in themselves precise and unambiguous no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the Legislature". It is equally well settled principle of construction that "Where alternative constructions are equally open that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating; and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system." With this background and having regard to the aforesaid two principles of construction, let us at the outset scrutinise the scheme of the Act. Section 3 defines "Chief Customs Authority" to mean the Central Board of Revenue. "Customs Collector" is defined to include "every officer of Customs for the time being in separate charge of a Custom-house, or duly authorised to perform all, or any special, duties of an officer so in charge." Section 19 confers a power on the Central Government to prohibit or restrict the importation or exportation of goods by sea or by land. Section 167 prescribes the various punishments for offences under the Act. Section 167(8) says that if any goods, the 900 importation or exportation of which is for the time being prohibited or restricted by or under Chapter IV of the Act, be imported into, or exported from India contrary to such prohibition or restriction, such goods shall be liable to confiscation; and any person concerned in any such offence shall be liable to a penalty not exceeding three times the value of the goods, or not exceeding one thousand rupees. Under Sec. 167(37)(c), if it be found, when any goods are entered at, or brought to be passed through, a Custom-house, either for importation or exportation, that the contents of such packages have been misstated in regard to sort, quality,

quantity or value, such packages shall be liable to confiscation and every person concerned in any such offence shall be liable to a penalty not exceeding one thousand rupees. Section 182, empowers the Collector of Customs to adjudicate whether anything is liable to confiscation, increased rate of duty or any person is liable to a penalty. Section 183 enjoins on such authority to give the owner of goods so confiscated an option to pay in lieu of confiscation such fine as it thinks fit. Section 188 gives a right of appeal from such an order to the Chief Customs Authority who is empowered to pass such order as he thinks fit, confirming, altering or annulling the decision or order appealed against; but under the proviso to that Section the said appellate authority cannot make an order subjecting any person to any greater confiscation, penalty or rate of duty than has been adjudged against him in the original decision or order. Every order passed under this Section is final subject to the power of revision conferred by Sec. 191 on the Central Government. Section 190 confers a power on the Chief Customs Authority to remit penalty, increased rate or confiscation in whole or in part; it also enables the said authority, with the consent of the owner of the goods ordered to be confiscated to commute the order of confiscation to a penalty not exceeding the value of such goods. Section 190A gives a power of revision to the Chief Customs Authority against an order of any officer of Customs passed under the Act and enables it to pass such order thereon as it thinks fit. Then comes the 901 crucial Sec. 193. As the argument turns upon the provisions of this Section, it would be convenient to read the entire Section at this stage :

> "Sec. 193 : When a penalty or increased rate of duty is adjudged against any person under this Act by any officer of Customs, such officer, if such penalty or increased rate be not paid, may levy the same by sale of any goods of the said person which may be in his charge or in the charge of any other officer of Customs. When an officer of Customs who has adjudged a penalty or increased rate of duty against any person under this Act is unable to realise the unpaid amount thereof from such goods, such officer may notify in writing to any Magistrate within the local limits of whose jurisdiction such person or any goods belonging to him may be, the name and residence of the said person and the amount of penalty or increased rate of duty unrecovered; and such Magistrate shall thereupon proceed to enforce payment of the said amount in like manner as if such penalty or increased rate had been a fine inflicted by himself."

Pausing here, let us recapitulate the gist of the aforesaid provisions. Under the Act the goods, whose importation or exportation is prohibited or restricted by the provisions of the Act, are liable to be confiscated and also the person concerned is liable to a penalty. Even a misstatement in regard to sort, quality, quantity or value of the goods so imported or exported is an offence and the packages, with their contents, are liable to be confiscated and the person concerned in any such offence is also liable to penalty. The Collector of

Customs can make an order confiscating the said goods as well as imposing a penalty on the person concerned. In an appeal against that order, the Chief Customs Authority can modify the said order, but it has no power to increase the burden. It can remit such penalty or confiscation, in whole or in part, but it can also commute the order of confiscation to penalty not exceeding the value of such goods. A person desiring to file an appeal against an order of penalty passed by an officer of Customs shall, pending an appeal, deposit in the hands of the Customs Collector at the port where the dispute arises the amount demanded by the officer passing such decision or order; and if he succeeds wholly or in part, the whole or such part thereof, as the case may be, shall be returned to him. The result of the provisions, therefore, is that there would never be a contingency or necessity for an appellate Tribunal to enforce payment of penalty imposed by it, for no appeal would be heard by it unless the penalty was deposited as aforesaid.

(5) With this background let us look at the relevant provisions of Sec. 193 of the Act. Under the said Section only an officer of Customs, who has adjudged a penalty or increased rate of duty, can realise the said penalty or rate through the machinery of a Magistrate. The question is whether the Chief Customs Authority is "an officer of Customs" who has adjudged a penalty or rate, as the case may be, within the meaning of Sec. 193 of the Act. Section 182 of the Act enumerates the different officers of Customs who are empowered to adjudge a question of penalty, but the Chief Customs Authority is not included in that list. Indeed, in Sec. 182(c) the Chief Customs Authority is empowered to nominate the subordinate officers of Customs to adjudge questions within certain pecuniary limits. That apart, Sec. 3(a) of the Act defines "Chief Customs Authority" to mean the Central Board of Revenue. The Central Board of Revenue is a statutory authority and, though it can only function through officers appointed to the said Board, it is inappropriate to call it an officer of Customs. In this situation, when under the provisions of the Act there is no scope for realisation of any penalty imposed for the first time by the Chief Customs Authority, it would be more in accord with the scheme of the Act to construe the words "an officer of Customs" as an officer of the Customs who is authorized to adjudicate in the first instance on the question of confiscation, increased rate of duty or penalty under Sec. 182 of the Act. This construction, it is said, would lead to ail anomaly of the statute conferring a power on the Chief Customs Authority to from it a procedure to enforce its collection. As we have pointed out, such an anomaly cannot arise under the provisions of the Act, for there is no Section which empowers the Chief Customs Authority to impose a penalty higher than that imposed by the Customs Officer."

43. Thus, from the aforesaid observations one can safely deduct that the power to punish or power to impose penalty is required to be unequivocally flowing from the language of the statute and that language and statute is required to be interpreted strictly. In the instant case, if the

party is required to be penalised or punished then he has to have knowledge in form of Rule 130C or Sec. 7 and he is made aware by the Legislature that this is the penalty which he is likely to be visited with.

44. This Court hasten to add here that Sec. 8 and Rule 131 had conferred power upon District Magistrate to suspend licence but those power and this type of suspension are not penal suspension in nature, and therefore, legislature and rule making authority have rightly not provided from the maxim therein. Therefore, till the breach is not remedied then the licence can remain under suspension, but that suspension cannot be treated as suspension by way of penalty or punishment. Therefore, by not providing maximum limit of suspension of licence by District Magistrate it can be said that rule making authority as well as the Legislature has made it clear the fact that the licence irrespective of provision are for suspending for continuous nuisance or requirement or prejudice are required to be arrested immediately. Therefore, such a provision is made but those provision cannot be utilised for punishing licensee and the punishment is provided and that punishment is for maximum limit also. Otherwise it would amount to say that punishment which is provided is ignored and harsh punishment which is not provided is brought into play by the District Magistrate without jurisdiction of law.

45. In the instant case, the question arises as to whether plain reading of language of Sec. 8 as well as Rule 131 would not entitle the District Magistrate to cancel licence, the answer is YES. Cancellation of licence for such a breach is relied upon the judicial scrutiny which could be on account of disproportionate action rendering it to be uncalled for and/or unworthy action as this prejudice are required to be viewed absolutely in accordance with provision of law and the practice. Therefore, the Apex Court has said in case of *Karnataka Rare Earth v. Senior Geologist, Department of Mines & Geology*, reported in 2004 (2) SCC 783, that it is left to the discretion of the authority to impose punishment then it is not incumbent upon the authority to impose the punishment of suspension on the facts and circumstances of the case. Therefore, even assuming for the sake of argument without holding there exist semblance of power under Rule 131(1) of the Cinema Rules or Sec. 8 of the Cinema Act, then also question arises as to whether such a drastic punishment was ever required to be imposed in light of the observation of the Apex Court in case of *Karnataka Rare Earth* (supra) as Sec. 7 and Rule 130C provides for maximum penalty of Rs. 1,000/- and Rs. 100/- per day thereafter; meaning thereby, was it open to the District Magistrate to read into this Sec. 8 or Rule 131(1) power to punish and that too impose punishment which can be disproportionate larger than the punishment which is already prescribed by

the Legislature in its wisdom for breach of the acts, the answer would be an emphatic NO.

46. The order impugned on the face of it indicate that the breach alleged against the petitioners are even admitted by the petitioners was not continuous one. The very terms of the notice that is show-cause notice issued upon the petitioners also contains unequivocal facts that the breach for which show-cause notice is issued is to breach which was past breach and even in show cause notice also it is not said that the breach is thereafter continued. When the breach is complete and the petitioner did admit that there was exhibition of cinema on account of receipt of caution notice from Tax Mamlatdar then question arise as to whether power envisaged under Sec. 8 or Rule 131(1) for issuing show-cause notice for suspension was justified, the answer is NO. As Sec. 8 and Rule 131(1) envisages power for suspension or cancellation *qua* breaches warranting exercise of that power. The notice clearly mentions that authority wanted to exercise the power of suspension and or cancellation on account of cinema exhibited beyond the period for exhibiting the same. If that breach was not continuous then it may view that breach did not give any justification and or jurisdictional authority to District Magistrate to invoke power or jurisdiction for limited period which is a punishment, and therefore, punishment power are lacking in District Magistrate. Therefore, this power are not there under Sec. 8 or Rule 131(1) of the Rules, then the District Magistrate did not have any jurisdictional effects awarding or justifying issuance of show-cause notice itself. Therefore, in my view show-cause notice itself was unwarranted and unjustified in the present case. The impugned orders in terms indicate that it was a suspending licence for a period of 30 days was by way of penalty so as to act as a deterrent on petitioners for their conduct and making the punishment for the conduct of their past act. The order of controlling authority by way of appellate order and the same is eloquently clear therefrom, there is justification of punishment upon the petitioners. In my view when Rule 131(1) or Sec. 8 are not providing for imposition of any punishment of this nature, then, the orders were absolutely without jurisdiction, *void ab initio* and is required to be quashed and set aside and accordingly they are hereby quashed and set aside.

47. Before parting, it is to be said that the decisions cited at the Bar by Shri P. K. Jani, learned Government Pleader also will have no applicability in view of the fact that the question of *mens rea* in a taxing statue or in F.E.R.A. Act was found to be alien there. It was a question of breach of duty cast upon person under Sec. 10 with Sec. 23 for invocation enlisted by the authorities to be decided with. Whereas in the instant case the Court is of the view that when there is maximum punishment already

provided in form of Sec. 7 and Rule 130C then apart therefrom no other punishment can ever be provided by way of inserting Sec. 8 or Rule 131(1) of the Rules, and therefore, those authorities are of no avail to the respondents in supporting the case for justifying the impugned orders.

48. The judgment cited at the Bar during course of dictation by Shri Parikh is also of no avail to the respondent as the Court there, was concerned with validity of Clause 11 of Clause which was providing for resorting to the said clause mentioned therein. The question of penalty which has been discussed herein above and the absence of prescription of such a penalty and providing of penalty in Sec. 7 and in Rule 130C would show that this ratio of the Apex Court has no applicability to the facts of the present case as there was no question that there was also penalty clause provided in another clause. In fact, Clause 11 was self-sufficient Code as could be seen from the reading of judgment and Para No. 9 especially. Therefore, this judgment has no applicability.

49. In view of aforesaid discussions the petition is required to be allowed and is accordingly allowed. The impugned orders are quashed and set aside as the orders are without authority of law and contrary to provisions of law and hence they are required to be quashed and is quashed and set aside. Rule made absolute.

50. At this stage, learned Advocates for the respondents have requested for staying the order so as to enable the respondents to approach the Division Bench for availing remedy by way of Letters Patent Appeal. This request cannot be accepted as when this Court has clearly held that the District Magistrate did not have jurisdiction to issue notice for imposing punishment of suspension and when the impugned order is passed ignoring the provision of Sec. 7 and Rule 130C and when suspension by way of punishment is not provided in the enlisted categories of penalty and when the prescribed penalty provides for much lighter penalty for such breach and when the respondents have failed in producing any order of suspension by way of punishment against any of the cinemas since inception of rules *i.e.* since 1954 and when the punishment itself is to run only up to 2-3-2012 staying of the order would amount to depriving the petitioners illogically of their legitimate right to exhibit cinema and hence this request is rejected.

(HSS) *Petition allowed.*

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