
(2014) 07 MAD CK 0228

In the Madras High Court

Case No : Writ Petition No. 14116 of 2014 and M.P. No. 1 of 2014

Balaji Theatre

APPELLANT

Vs

The Union Territory of Puducherry

RESPONDENT

Date of Decision : 03-07-2014

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g)

Citation : (2014) 4 LW 209 : (2014) WritLR 746

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Judgement

C.S. Karnan, J.—The short facts of the case are as follows:-

2. The writ petitioner submits that the second respondent herein / District Magistrate-cum-Licensing Authority, Government of Puducherry is empowered to issue licence under the Pondicherry Cinema Regulation Act and the second respondent is entitled to issue necessary directions as conditions for issuing licence. The petitioner had obtained necessary licences prescribed under the Act by scrupulously following all mandatory provisions. He has been running a theatre in the name and style of "M/s. Balaji Theatre" for nearly three decades and the said theatre is the pioneer in the city of Puducherry. As on date, there is no allegation of any violation of conditions annexed to the licence. The Hon'ble Supreme Court in its judgment made in 1996 (6) SCC 150, had held that the theatres can procure films of educative and scientific value from the third party sources and had held that it is not mandatory to procure films of such nature from film division alone. In view of such an order and also taking into consideration of the fact that the films of film division is not easily accessible and being costly, he started to procure approved films from third party sources. The second respondent still insisted to procure films only from films division alone, despite the orders of the Hon'ble Supreme Court and started to issue temporary licence under Form "E", the validity of the same is a month. As it is tedious to get the licence for each and every month, he had filed W.P.No. 20546 of 2009, on

the file of this Court, seeking a mandamus, directing the second respondent herein to issue form "C" licence without insisting the petitioner to procure films from Films Division alone. The above writ petition was hotly contested and ultimately allowed by this Court. The petitioner has filed caveat petition and till date, the second respondent has not questioned the said order and thus the order passed in W.P.No. 20546 of 2009, had become final.

2. The petitioner additionally added that in the meantime, the second respondent issued an order dated 05.06.2012, holding that he has exhibited films without licence and hence, concluded that his act is in contravention of Cinema Regulations and directed him to accept his guilt and directed him to compound the alleged offence, failing which, threatened that his theatre would be closed. He questioned the legality of the order before this Court in W.P.No. 15024 of 2012, on the ground that no one can compel the other to admit the guilt and direct to compound the offence by paying penalty. This Court, by its order dated 01.11.2012, stayed the order of the second respondent. As mentioned earlier, this Court was pleased to allow W.P.No. 20546 of 2009, and directed the second respondent to issue the licence under Form "C", forthwith. He wrote very many letters to the second respondent seeking him to comply with the orders of the Court. In the meantime, the petitioner's son raised some disputes on partnership. In view of the same, the second respondent issued summons directing him to appear before him, on the issue of partnership disputes. As the second respondent is only a licencing authority, the petitioner questioned the jurisdiction of the second respondent to conduct the proceedings in W.P.No. 33140 of 2013. This Court was pleased to dismiss the writ petition which was assailed in W.A.No. 2445 of 2013 and the Hon'ble Division Bench was pleased to admit the above appeal and granted stay of proceedings. In view of the same, there is no embargo for the second respondent to issue Form "C", but the second respondent was adamant in issuing Form "C" licence. Hence, left with no other alternative, he was constrained to file contempt petition in Cont. P. No. 947 of 2014, before this Court. The notice, in the above contempt petition, was returned and fresh notice was ordered. It is quite obvious that the second respondent is evading service in the above contempt.

3. The petitioner further submits that the second respondent is insisting to procure films only with the film division alone, despite the Hon'ble Supreme Court's order coupled with the order of this Court made in W.P.No. 20546 of 2009. As this Court had given a verdict in his favour, he is procuring films from films division and he is also procuring from third party sources which fact is unacceptable to the second respondent, who is using all devises against him to stall the smooth running of business, by issuing various illegal orders. The second respondent had already issued orders, stalling the smooth functioning of the petitioner's theatre, which had been prevented by the timely orders of this Court. The present impugned order issued by the second respondent, which is signed by the third respondent is another off-shoot of the arbitrary action of the second respondent. The petitioner further added that the second respondent had

passed the impugned order without any legal backing as the same is issued with a mala-fide intention to paralyse the functioning of the theatre. The respondent had mentioned some allegations in his impugned order and had not sought any explanations with the petitioner before passing the capital punishment of sealing of the theatre. If the petitioner was afforded with an opportunity to explain to the allegation levelled against the theatre, it would have clearly demonstrated with the respondents as to how the allegations are false and how the alleged complaint is false.

4. The petitioner further stated that by passing the impugned order, the second respondent had neglected the order passed by Court. The very invocation of Section 9 of the Pondicherry Cinema Regulation Act is per-se bad and illegal to the allegation levelled against the petitioner. The Section 9 of the Pondicherry Cinema Regulation Act is extracted hereunder:-

9. Power to suspend exhibition of films in certain cases:-

(1) The Competent Authority may, if he is of opinion that any film which is being or is about to be publicly exhibited is likely to cause breach of the peace, by order in writing suspend the exhibition of the said film; and during such suspension, no person shall exhibit such film or permit it to be exhibited in any place in the State or any part thereof, as the case may be.

(2) No order shall be issued under Sub-section (1) until the person concerned has been given a reasonable opportunity of showing cause against the order proposed to be issued in regard to him:

Provided that this sub-section shall not apply where the Competent Authority is satisfied that owing to any emergency or for some other reason, to be recorded by him in writing, it is not reasonably practicable to give to that person an opportunity of showing cause:

Provided further that a copy of the reasons recorded by the Competent Authority for issuing the order shall be communicated to the person concerned as soon as it becomes reasonably practicable to do so.

(3) If any question arises whether it is reasonably practicable to give to any person an opportunity of showing cause under sub-section (2), the decision thereon of the Competent Authority shall be final.

(4) Where an order under Sub-section (1) has been issued by the Competent Authority, a copy thereof, together with a statement of the reasons therefor, shall forthwith be forwarded by him to the Government and the Government may, on a consideration of all the facts of the case, either confirm or vary or discharge the order.

(5) An order issued under sub-section (1) shall remain in force for a period of two weeks from the date thereof, but the Government may, if they are of opinion that the order should continue in force, direct that the period of suspension shall

be extended by such further period as they think fit:

Provided that the Government or the Competent Authority may review their own order.

Thus a bare reading of the order makes it abundantly clear that the power under Section 9 cannot be invoked in the case on hand. The impugned order mentions that the petitioner had collected Rs. 20/- extra per ticket towards the rent of the 3D glasses supplied for viewing the 3D films "Spiderman". Thus, by collecting Rs. 20 above the ticket rate fixed by the second respondent, he had violated the provisions of Rule 95 E (6) of the Pondicherry Cinema Regulation Rules. The said provision is extracted hereunder:-

(6) The licensing authority, while granting or renewing the licence shall fix the number of persons to be admitted at a time and also fix the maximum rates of admission exclusive of the entertainment tax payable under the Pondicherry Municipalities Act, 1973 (Act No. 9 of 1974) or the Pondicherry Village Commune Panchayats Act, 1973 (Act No. 10 of 1974) as the case may be and the rules made there-under

5. The petitioner additionally added that the impugned order besides being illegal, is also quite contrary as the alleged violation of Rule 95 (3) can be attributable to violation of licence conditions and is liable to be penalized under Section 10 of the Pondicherry Cinema Regulation Act and hence, by no stretch of imagination, the theatre could be sealed. The second respondent, did not even maintain as to who are the complainants and what are the nature of the complaint levelled against the petitioner. The failure on the part of the respondents to afford an opportunity to hear the petitioner shows the action of the respondent can be termed as vindictive. The impugned order is liable to be quashed as the respondent does not have any jurisdiction to interpret the definition to suit his convenience as the Rules prescribes the Government to do so. The term issued in the Rules is that to "fix the maximum rates of admission", the word "admission" is not defined in the Rules and hence, in case of interpretation that the word admission would include the extra charges of modern viewing of the films by using spectacles would be left to the Government to define the same as per the provisions of Rule 4 of the Pondicherry Cinema Regulation Rules. In view of the same, the very issuance of the impugned order is clearly without jurisdiction and hence, the same is liable to be quashed. Therefore, the above writ petition has been filed.

6. The second respondent has filed a counter affidavit which are as follows:-

The respondent submits that various complaints were received from the general public against the "Balaji Theatre", Puducherry stating that when they went to the above said theatre for watching an english movie, "Spiderman", the theatre management had collected an amount of Rs. 20/- extra, in the counter, over and above the admission rate of Rs. 70/- for first class ticket. While they enquired and argued with the person managing the counter, it was informed that they

were screening a 3D film and they were collecting extra for renting 3D glasses. The extra amount of Rs. 20/- was collected without giving any bill or receipt and without getting permission from the District Collector. Therefore, the complainants had requested to take necessary suitable action against the petitioner's theatre for violating the licence conditions and collecting extra amount of Rs. 20/-. Some of the complainants have even given some photographs of the notice displayed in "Balaji Theatre", Puducherry, which compulsorily demanded the extra amount of Rs. 20/-, for renting of 3D glasses.

7. The respondent further submits that it was amply clear that the theatre management is collecting additional amount over and above the amount fixed by the said theatre for the tickets. The act of the theatre management in additionally collecting Rs. 20/- for 3D glasses, without the knowledge or permission from the District Collector-cum-District Management is in violation of Pondicherry Cinemas (Regulation) Rules, 1966 and condition number 6 appended to the Form "C" licence. The relevant condition appended to Form "C" and Rule 95 E (6) are reproduced hereunder:-

Condition No. 6

The maximum rates of payment for admission to the different classes in the licenced premises shall be as indicated below and these rates shall not be increased during currency of this licence without an order in writing by the licensing authority permitting such increase. The order of the licensing authority in this regard is liable to be cancelled or modified by the Government if they consider such a course just and necessary.

Any person who is aggrieved by the order of the licensing authority on any application for permission to increase the said maximum rates may, within thirty days from the date of receipt of such order appeal to the Government, who may, after such inquiry as they consider necessary, pass such orders thereon they think fit.

Rule 95 E (6)

The licensing Authority, while granting or permitting the licence shall fix the number of persons to be admitted at a time and also fix the maximum rates of admission exclusive of the entertainment tax payable under the Pondicherry Municipalities Act, 1973 (Act No. 9 1974) or the Pondicherry Village and Commune Panchayats Act, 1973 (Act No. 10 of 1974) as the case may be, and the rule made thereunder.

8. The respondent additionally stated that the licensing authority accordingly fixed the admission rate of various classes vide order No. 1928/DM/D1/2006-12, dated 18.05.2012 as detailed below for M/s. Balaji Theatre, Puducherry.

Box

Rs. 100.00

Balcony

Rs. 90.00

I Class

Rs. 70.00

II Class

Rs. 50.00

III Class

Rs. 20.00

Further, it is submitted that the licensee had given his consent to the revised admission rate and necessary endorsement was also made in the Form "C", licence book of M/s. Balaji Theatre, Puducherry, vide the Endt. No. 1928/DM/D1/2006, dated 25.05.2012. The licensee, M/s. Balaji Theatre, Puducherry, cannot be permitted to collect the extra amount illegally from the general public, in violation of the above order and therefore, the licence of M/s. Balaji Theatre, Puducherry has been suspended as per Section 9 of the Pondicherry Cinema (Regulation) Act, 1964 and the Sub Divisional Magistrate (North), Pondicherry has been ordered to seal the theatre premises.

9. The respondents further submitted that the licensee, M/s. Balaji Theatre, Puducherry, has approached this Court and filed a writ petition against the order of this administration, wherein he has given facts about another case in W.P.No. 20546 of 2009, which was appealed against and the facts of which are totally irrelevant to the present case. That writ petition pertains to obtaining approved films from the films division of India, which is in no way connected to the present case, as the present case is about collecting extra amount, illegally. Even, with regard to the case, this Court's orders was appealed against. The present case is exclusively about the illegal action of the theatre / licensee in cheating the general public by collecting extra amount, arbitrarily from the general public, without the knowledge and permission of the District Collector-cum-District Magistrate. As the licensing authority, the District Magistrate-cum-District Collector, Puducherry, is well within the authority to suspend the licence and to seal the place, where illegal activities are going on. The District Administration cannot turn a deaf ear, to the complaints of the public, regarding collecting illegal and extra money from the public by the cinema theatre. Therefore, the order passed Vide No. 4874/DM/D1/2014, dated 26.05.2014 is just and legal. Hence, this respondent entreats the Court to dismiss the above writ petition.

10. The highly competent counsel, Mr.D.Ravichander, appearing for the petitioner submits that the respondents have passed the said impugned order without giving an opportunity to the petitioner to defend his case. As such, the impugned order is not sustainable under law and also violates the principles of natural justice. Further, the impugned order is illegal as the provisions of Section 9 of the

Act does not attract to the present case at all and the allegation levelled assumed to be true, without admitting to be true, can be merely treated as violation of conditions annexed to licence and liable to be punished under Section 10 of the Act alone. As such, the major punishment imposed on the petitioner is arbitrary and it cannot be operated further. The second respondent has been continuously passing arbitrary orders, with mala-fide intentions in order to harass the petitioner. Hence, on two occasions, the petitioner has filed two writ petitions, before this Court. The main allegation against the petitioner is that he had collected the money of Rs. 20/- towards the issuance of 3D glasses, as alleged in the notice. In order to prove the vague allegations, the respondents had not substantiated the allegation with any documentary proof by producing the name of the complainant. The impugned order is nothing but a final order, and has been passed without conducting first stage of enquiry i.e., issuance of preliminary notice / show cause notice. As such, the impugned order suspending the licence is not found to be suitable for execution against the theatre. Further, the petitioner has been operating the theatre for more than three decades, without any adverse remarks from the public. As such, the impugned order runs contrary to the rights guaranteed under Article 19(1)(g) of the Constitution of India. Further, many employees are working in the theatre and they are depending upon income derived from the theatre. Hence, the welfare of the employees will also be affected if the impugned order is permitted to be operated upon.

11. The highly competent counsel appearing for the petitioner further submits that the second respondent has misused his administrative power and has passed the said impugned order without following necessary procedure. As such, the petitioner's rights will be prejudiced. Further, if the licence of the theatre is cancelled, then the petitioner and his employees would be put into irreparable loss and hardship. The balance of convenience i.e., in terms of social justice also vests with the petitioner, who is running the theatre for viewing of general public. Without conducting comprehensive enquiry and without determining the veracity of the truthfulness of the alleged complaints, the second respondent has passed the order duly signed by the third respondent. Hence, the learned counsel prays to allow the above writ petition and set-aside the impugned order.

12. Mr.A.Tamilvanan, highly competent Government Advocate (Puducherry) appearing for the respondents submits that the petitioner frequently commits irregularities and illegalities and therefore, the respondents were constrained to operate their administrative power in accordance with law in order to control the irregularities as it is causing injustice to the public. The petitioner has no locus-standi to collect Rs. 20/- from the viewing public for providing 3D glasses for viewing the film, viz., "Spiderman" for about 2 hours, which is highly illegal. Further, the petitioner has forcibly collected the said amount, without obtaining proper permission from the respondents and without prior intimation to the public. As such, the petitioner has taken law into his hands and has caused inconvenience to the public by way of providing 3D glasses in the theatre for

viewing the picture. The petitioner's theatre has been granted licence only with certain terms and conditions and these conditions have been violated by the petitioner. Further, due mention has been made about the reasons for sealing of the theatre in the impugned order. Before passing the order, the Sub Divisional Magistrate (North), Puducherry, was directed to conduct surprise inspection in the said theatre to verify the veracity of the complaints given by the general public. Further, some of the public came to the respondents' office and gave photographs of the petitioner's theatre, wherein a display on the notice board shows that "the viewers shall use 3D glasses to view the film and each viewer shall compulsorily pay Rs. 20/- as extra in the ticket counter itself. The 3D glasses shall be returned to the theatre management, after viewing the film." As such, the theatre management is collecting additional amount over and above the rate of ticket, on compulsory basis, which is violating the conditions annexed to Form "C" and Rule 95 E (6) of the Pondicherry Cinemas (Regulation) Rules, 1966. Therefore, the respondents order is found to be fit to be proceeded with further, since the theatre management has caused injustice and inconvenience to the general public, for personal gain. The petitioner's theatre is a public premises and it is to be operated as per the theatre licence conditions. But, the management is operating the theatre in a manner which is violative of the conditions mentioned in the Form "C" and Rule 95 E (6) of the Pondicherry Cinemas (Regulation) Rules.

13. Per contra, the very competent counsel, Mr.D.Ravichander, appearing for the petitioner submits that in order to prove the allegations against the theatre, there is no written complaint from the general public and the list of alleged viewers who had viewed the movie after, paying a sum of Rs. 20/- as additional charge has not been furnished. Further, to prove the alleged inspection of the theatre by the Sub-Divisional Magistrate, no documentary evidence had been let in and no eyewitnesses or circumstantial evidence of viewers had been shown. Therefore, it is evident that the impugned order has been passed in an arbitrary manner based only on the opinion of the respondents and as such, the fundamental and personal rights of the petitioner had been violated. For passing final order, preliminary enquiry is of paramount importance. In the instant case, this has not been followed. As such, the order of sealing the theatre premises is against the principles of natural justice.

14. On considering the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the affidavit of the petitioner, counter of the respondents and impugned order of the respondents, this Court is of the view that the respondents should have conducted preliminary enquiry / first stage of enquiry before passing the final order. Further, in order to prove the allegation that the theatre management had collected Rs. 20/- from the viewers for 3D glasses, on compulsory basis, no viewers had been enquired with by the respondents in the presence of the petitioner. Further, no mention has been made about seizure of 3D glasses either from the viewers or from the theatre management. Further, the date of show,

time of show and number of viewers who had paid Rs. 20/- as additional charge for using 3D glasses had not been mentioned. Therefore, the impugned order passed by the second respondent and duly signed by the third respondent is not found to be suitable for execution against the petitioner's theatre.

15. Hence, this Court allows the above writ petition. Consequently, the order passed by the second respondent in his proceedings No. 4874/DM/D1/2014, dated 26.05.2014, which was signed by the third respondent is set-aside. There is no order as to costs. Consequently, connected miscellaneous petition is closed.