(1991) 06 KL CK 0035

In the High Court Of Kerala

Case No : O.P. No''s. 10212 and 10175 of 1989

Gracykutty Mammen and etc. APPELLANT

Vs

Chengannur Municipal Council RESPONDENT

Date of Decision : 25-06-1991

Acts Referred:

Kerala Local Authorities Entertainments Tax Act, 1961 — Section 10, 12, 12(2), 5

Citation : AIR 1992 Ker 197 : (1991) 3 ILR (Ker) 360 : (1991) 2 KLJ 182

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Advocate : C.V. Vasudevan and P.V. Aiyappan, for the Appellant; N.N. Narayana Pillai, for the Respondent

Final Decision : Allowed

Judgement

K. Sreedharan, J.—Identical questions arise for consideration in these original petitions, filed against the same legal authority, the Chengannur Municipal Council. So consider it advantageous to dispose of them by a common judgment.

2. Petitioner in O. P. 10175/89 is the proprietor of Theatre ''Chippy Movies'', Chengannur. While matinee show was in progress on 12-9-1989, the Chairman of the Municipality accompanied by the Chairman of the Standing Committee visited the theatre. At that time daily collection register was not completed. They also found extra chairs placed in the balcony and first class. Thereupon Ext.P-1 notice dated 20-9-1989 was issued calling upon them to show cause why action should not be taken for the above violation. In compliance with that notice, petitioner filed Ext.P-2 reply. Without affording any further opportunity to the petitioner to substantiate his objections and without hearing him, Ext.P-3 order dated 30-11-1989 was served directing him to close down the theatre with effect from 4-12-1989. That order is under challenge.

3. Petitioner in O. P. 10212/1989 is the proprietor of Grace Movies'', a film theatre at Chengannur. The Chairman of the Municipality accompanied by the

Chairman of the Standing Committee visited that theatre at 3.55p.m. on 12-9-1989. Even though the matinee show started at 2.45 p.m., the daily collection register was not closed at the time of their visit. So notice, Ext.P-1 dated 20-9-1989 was served on the petitioner to show cause why action should not be taken for the violation of the conditions of the licence. Petitioner filed Ext.P-2 explanation denying the allegations. Without affording further opportunity to the petitioner to substantiate the contentions raised in the objection and without hearing her, Ext.P-3 order dated 30-11-1989 was issued directing her to close down the theatre with effect from 4-12-1989. That order is under challenge.

4. Detailed counter-affidavits have been filed on behalf of the respondent. The contention raised therein are identical. They are as follows: The theatre situated within the municipal limits are bound to follow the rules passed by the Chengannur Municipal Council. They are also governed by the Kerala Cinema Regulation Act, 1958, Kerala Cinema Regulation Rules and the Kerala Local Authorities Entertainment Tax Act, 1961. Municipal Council at its meeting held on 28-4-1988 framed rules concerning the cinema exhibition and ticket sealing and preparation of daily collection register statement. As per those rules, the daily collection register, for short OCR, should be machine numbered and sealed by the Municipality. No person should be admitted to the theatre without ticket on pass issued by the authority. Within 30 minutes of the commencement of the cinema show, OCR should be prepared and all columns filled up. The Manager of the theatre, the film representative and the Checking Officer deputed by the Municipality should affix their signatures in that register. On 12-9-1989 when the Chairman of the Municipality visited the theatre along with the Chairman of the Standing Committee, the DCR was not completed. In the theatre belonging to the petitioner in O.P. 10175/89, 150 additional seats were arranged in the first class and 100 seats in the second class. The film show started with full house. In the case of the Grace Movies belonging to petitioner in O. P. 10212/1989, the DCR was not completed at 3.55 p.m. even though the film started at 2.45 p.m. So proper notices were issued calling upon the petitioners to show cause why action should not be taken. Their objections were considered and orders issued. Those orders are not open to challenge in this proceedings.

5. Before going into the details, I think it worthwhile to refer to the provisions contained in the Kerala Local Authorities Entertainment Tax Act, 1961, hereinafter referred to as "the Act". As per Section 5 of that Act, admission of persons to entertainment is to be subject to payment of tax to the local authorities. A person can be admitted with a ticket stamped by the local authority indicating the payment of the tax. In other cases, persons can be admitted by means of mechanical contrivance which automatically registers the number of persons admitted. In such cases the proprietor of the entertainment should have made arrangements with a local authority for furnishing returns of the payment for admission and should have given security for the payment of the tax. If any person is admitted without paying the tax or without arranging for the

payment of tax, it will amount to violation of the provisions of Section 5 of the Act. In other words to constitute violation of provisions of Section 5 it should be established that the licensee admitted any person without payment of tax due to the local authority. In case, the proprietor of the entertainment violates the provisions contained in Section 5, he will be subject to the penalties provided by Section 10 of the Act. Clause 1 of Section 10 provides for prosecuting him. As per Clause 2, the local authority can prevent the further use of such place for the purpose of any entertainment. Before issuing an order preventing further use of the place for the purpose of entertainment, a reasonable opportunity to show cause against a proposed action should be given to the proprietor of the entertainment. In case the order under Clause 2 is not complied with then the help of the police can be availed of for enforcing the order as provided by Clause 3. Thus Section 10 makes it clear that the powers under that section can be exercised only when the licensee fails to comply with the mandates of Section 5 and not otherwise.

Section 12 of the Act authorises the local authority to make bye-laws. Clause (1) (g) of that section authorises the local authority to make bye-laws for the regulation of the time and mode of collection of tax under the Act. Invoking this power, the respondent-Municipality passed Ext. R-1 rules. As per that, the Manager of the theatre should complete the daily collection register within 30 minutes of the beginning of the show. If this rule is violated, the licensee will be subjected to the penal consequences provided by Section 12(2) of the Act. As per that Clause, any violation of the rule shall be punishable with fine which may extend to Rs. 50/- and in the case of a continuing breach with fine which may extend to fifteen rupees for every day during which the breach continues, after conviction for the first breach. A reading of this clause shows that fine can be imposed only on conviction. Local authority is not empowered to convict the licensee. The conviction can be entered only by a competent criminal court. So for violation of the rules framed u/s 12(2) the licensees have to be prosecuted before criminal courts.

6. Now I will proceed to examine the facts before me in the light of the above statutory provision. In O. P. 10175/1989, it is alleged that petitioner did not complete the DCR within 30 minutes of the starting of the matinee show and that extra seats were seen provided in the theatre. In Ext.P-1 notice it is not mentioned that people were admitted to the extra seats, without collecting entertainment tax and thereby violated the provisions contained in Section 5 of the Act. The mere fact that additional seats were placed in the theatre will not subject the licensee to any penal consequences. If only he admitted any person for payment to the theatre without issuing a ticket, the tax for which has not been paid, he can be said to have violated Section 5. Unless the provisions contained in Section 5 are violated, no action contemplated by Section 10(2) can be initiated against the owner or proprietor of the entertainment. Ext.P-1 notice to the petitioner is silent in this regard. The other ground mentioned in the notice is the violation of the rule regarding the completion of the DCR. For violating that

rule, no action u/s 10(2) of the Act can be initiated.

7. In the case of Grace Movies'', the only allegation made by the respondent is the non-completion of DCR within 30 minutes of the starting of the matinee show. Since there is no allegation that the petitioner violated the provisions containing Section 5 of the Act, the respondent was not justified in taking action u/s 10(2) of the Act.

8. Petitioners in these original petitions have specifically raised a contention that the Chairman of the Municipality and the Chairman of the Standing Committee are not competent to initiate action against the petitioners under the provisions of the Act or under the Kerala Cinema Regulation Act and Rules. Section 10(2) of the Act provides that any Officer authorised by the local authority in this behalf may enter any place of entertainment while the entertainment is proceeding for ascertaining whether the provision of Section 5 are complied with or not. In other words, for initiating action u/s 10(2), inspection should have been made by any officer authorised by local authority to verify whether the provisions of Section 5 are complied with or not. Chairman of the Municipality and the Chairman of the Standing Committee, it is averred, have not been authorised by the local authority for conducting any such inspection of the place of entertainment. This averment has not been denied by the respondent. In this circumstances the contention raised by the petitioners that there was no proper inspection of the place of entertainment has to be upheld. I need not pursue the matter any further because respondent has no case in the notices given to the petitioners that they violated the provisions of Sections of the Act.

9. As stated earlier, respondent in Ext. R 1 rules fixed a time limit for completing the DCR. The owner or the managers of the theatre are bound to comply with that direction. The said provision is the rule if violated can, at worst subject the licensee to the penalty u/s 12(2) of the Act. The respondent has not taken any action u/s 12(2). As stated earlier, the respondent cannot take any action u/s 10(2) of the Act because the notice issued to the petitioners did not state that they violated the provisions of Section 5 of the Act.

10. Ext.P-3 orders issued by the respondent state that they are issued invoking the provisions contained in the Kerala Cinemas (Regulation) Act, 1958 as well. Notices issued to the petitioners did not state that action under this Act is being initiated. Petitioners were not called upon to answer any allegation regarding the infringement of any of its provisions. Thus the respondent cannot direct the closure of the theatre invoking the provisions of this Act.

11. In view of what has been stated above, I hold that orders issued by the respondent directing the petitioners to close down the theatre with effect from 4-12-1989 have no legal validity. The orders are quashed.

The original petitions are allowed in the above terms. Parties are directed to suffer their costs.

Issue photo copy of the judgment to the parties on usual terms.

