

(1983) 01 MAD CK 0008
In the Madras High Court

K.R. Subramaniam

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 24-01-1983

Acts Referred:

Tamil Nadu Cinemas (Regulation) Act, 1955 — Section 5

Citation : (1983) 96 LW 409 : (1983) 2 MLJ 267

Hon'ble Judges : S. Padmanabhan, J

Bench : Division Bench

Judgement

S. Padmanabhan, J.—The writ petition has been filed by one K.R. Subramaniam for the issue of a writ of certiorari to quash the

proceedings of the first respondent in G.O. Ms. Nos. 264, Home (Cinema) Department dated 5th February, 1982, under the following

circumstances:

2. On 12th June, 1980, the petitioner preferred an application to the Collector of Periyar District for the grant of a no-objection certificate to

locate a touring cinema in R.S. Nos. 39/2 and 39/3 of Peria kodiveri Village in Gobi Taluk. The application was duly published in the notice board

of the Collectorate and the concerned Panchayat Union Office in accordance with the Rules. No-objections were received from any person within

the prescribed period of 15 days. One Nanjappa Nadar filed an objection after the expiry of the period of 15 days and that was rejected by the

Collector, the third respondent herein. The Town Panchayat and the Superintendent of Police did not raise objections to the grant of no-objection

certificate. The Collector, however, rejected the application by his proceedings D. Dis. No. 71284/80-C2 dated 11th November, 1980. The

petitioner then preferred an appeal to the Commissioner for Land Administration, Madras, the second respondent. The Commissioner held that the petitioner may be granted a no-objection certificate subject to the condition that the petitioner should stop running the cinema as and when two permanent theatres come into operation. With these observations, he remitted the matter to the Collector for fresh consideration. The Collector again rejected the petitioner's application on 7th May, 1981. The petitioner again preferred an appeal to the second respondent. The second respondent by his proceedings D. Dis. No. 24240 of 1981 dated 25th May, 1981, directed the issue of no-objection certificate to the petitioner on his giving an undertaking that he would discontinue the operation immediately on commencement of Nanjappa Nadar's theatre. Against the said order, Nanjappa Nadar has filed a writ petition in W.P. No. 3456 of 1981 which is pending on the file of this Court. Though in W.M.P. No. 4697 of 1981 he obtained an ex parte order of interim stay, that was vacated by this Court on 30th July, 1981. While so, the fourth respondent A. Ponnuswamy filed a revision before the Government questioning the order passed by the second respondent, Commissioner, directing the issue of no-objection certificate to the writ petitioner. On that revision, the Government passed G.O. Ms. No. 264, Home (Cinemas) Department, dated 5th February, 1982, setting aside the order of the second respondent directing the issue of no-objection certificate to the petitioner. Hence the writ petition.

3. During the pendency of the Writ petition, the writ petitioner filed W.M.P. No. 6665 of 1982 praying that directions may be issued to the Collector of Periyar District to issue a no-objection certificate to the petitioner in respect of his touring cinema in terms of the order of the second respondent passed on 25th May, 1981. Ramaswami, J., passed an order on 8th October, 1982, directing the third respondent, Collector of Periyar District, to issue the no-objection certificate to the petitioner. The fourth respondent has filed the writ appeal against the said order of the learned Judge.

4. The short submission made by Mr. R.D. Indresenan on behalf of the writ petitioner was that the fourth respondent did not prefer any objection before the Collector within 15 days prescribed under the rules. Consequently the

4th respondent should not be considered to be an aggrieved

person and he had no locus standi to file a revision before the Government against the order passed by the second respondent, Commissioner, on

25th May, 1981, directing, the issue of no objection certificate to the petitioner. The matter is not res Integra and is covered by a catena of

decisions of this Court from the ratio of which we do not find any reason to differ.

5. Section 5 of the Tamil Nadu Cinemas (Regulation) Act, 1955, confers power on the licensing authority to grant or refuse a licence. Rule 35 of

Part 11(a) deals with the approval of location of permanent cinemas. Rule 100 of the Rules states that a person who intends to build a travelling

cinema building shall follow the procedure in Rule 35 in part II (a). Rule 106-A is to the effect that on receipt of an application for the issue of a no

objection certificate the licensing authority shall publish a notice in the notice board of the office of the licensing authority and the concerned

Panchayat Union. The notice must call for objections, if any, from the public in regard to the non-compliance by the applicant of the provisions of

any of the rules or the violation thereof. The rule further enjoins that the objections should be filed before the licensing authority within 15 days

from the date of publication of the notice. The rule further states that any objection filed after the expiry of 15 days shall be summarily rejected. The

interpretation of this rule came up for consideration before a Bench of this Court in S.P. Somasundaram v. The Board of Revenue Commissioner

of Land Revenue and Cinematograph Act W.A. No. 63 of 1973. One of the questions which the Bench was called upon to consider was the

effect of non-compliance of the provisions of Rule 106-A in the matter of preferring the objections. The Bench took the view that a member of the

public who does not file the objections within the time prescribed under Rule 106-A could not be an aggrieved person. The same question arose

before Mohan, J. in W. P. No. 3505 of 1979, and W.P. No. 4523 of 1979, Sathiadev, J. in W.P. No. 4442 of 1978 and Nainar Sundaram, J. in

W.P. No. 3510 of 1980 and W.P. No. 452 of 1981. All the learned Judges have consistently followed the ratio laid down by the Bench in W.A.

No. 63 of 1973. The correctness of the legal position was again canvassed before one of us in The Provincial Superior Vs. The State of Tamil

Nadu and Others, , In that case, the Bench decision was sought to be

distinguished on the ground that in the case before the Bench the writ petitioner had not filed any objections at all and, therefore, the Bench took the view that the person concerned could not be treated as an

aggrieved person within the meaning of Section 5(7). To highlight this, the following observations from the Bench decision were cited:

All objections Under that rule shall be filed in writing before the licensing authority within 15 days from the date of publication of the notice. The

rule further prescribes that any objection filed after the period shall be liable to be summarily rejected. That means that if the authority rejected the

representations on the ground that they were filed out of time, the representator would have no further right to be heard. The case of respondents 2

and 3 is worse. They made no representations.

From the above observations of the Bench it was sought to be argued that the Bench impliedly meant to say that the authority could have accepted

the representations even after the expiry of 15 days. This argument was not accepted. After considering the Bench decision and the ratio laid down

by three other learned Judges already referred to, it was observed as follows:

The following principles emerge from the above analysis. The provision under Rule 106-A, which permits a member of the public to prefer or her

objections to the grant of a licence within 15 days from the date of the notification, is mandatory. If an objection is filed beyond the 15 days time,

such an objection has no validity in law and it cannot be taken note of. The licensing authority has no jurisdiction to entertain an objection that is

filed by a member of the public beyond the period of 15 days under Rule 106-A and deal with the same on merits. Even if the Collector or the

licensing authority deals with such a belated objection and grants a no objection certificate to the applicant, the objector who has filed a belated

objection will have no $\frac{1}{2}$ locus standi either to file an appeal or revision before the appropriate authorities. Such a person cannot be said to be an

aggrieved person. Consequently, I have no hesitation in holding that the writ petitioner is not an aggrieved person- She had no locus standi to file

an appeal or revision before appropriate authorities- Equally she has no locus standi to file this writ petition.

6. In that case, the writ petitioner did not prefer her objections before the Collector within 15 days. The Collector had refused to grant no

objection certificate against which the applicant preferred an appeal to the Commissioner of Land Revenue and Commercial Taxes who set aside

the order of the Collector and directed the issue of a no objection certificate against which the writ petitioner preferred a revision petition before

the Government which in turn dismissed the revision petition.

Thereafter, the petitioner filed the writ petition before this Court. It was held that the petitioner was not an aggrieved person. We are not

persuaded to differ from the ratio laid down in the above decision. In this case, it is admitted that the 4th respondent did not prefer any objection at

all within the period of 15 days prescribed Under Rule 106-A. Consequently, we hold that he is "" of an aggrieved person and he could not have

maintained a revision petition before the Government. The (sic) order of the Government entertaining the revision petition at the instance of the 4th

respondent setting aside the order of the second respondent is without jurisdiction.

7. Mr. Sivamani on behalf of the 4th respondent put forward an argument that the Government had suo motu powers of revision and that in any

event the grant of the no-objection certificate by the second respondent was contrary to the rules. A perusal of the order shows that the

Government have passed the impugned order only on the revision petition filed by the 4th respondent. In fact, before the Government, an objection

was taken by the writ petitioner that the 4th respondent was not an aggrieved person and had no locus standi to file a revision as he did not file his

objections before the Collector. The Government, however, rejected the objections raised by the writ petitioner as not acceptable. It is unfortunate

that in passing the impugned order the Government overlooked the long catena of decision already referred to which clearly state that a person

who does not file an objection before the Collector within 15 days prescribed under Rule 106-A is not an aggrieved person and cannot maintain

an appeal or revision or a writ petition-He cannot even file a petition before the Collector after the expiry of 15 days. As regards the argument of

Mr. Sivamani that the grant of no objection certificate by the second respondent was contrary to the rules, it is not open to the 4th respondent to

urge that notwithstanding himself being not an aggrieved person, this Court must enforce the statutory obligations enjoined on the authorities in

deciding that adequacy or suitability, as the case may be. Unless he makes out a case that he is an aggrieved person he cannot invite the Court to

examine the correctness of the order passed by the second respondent granting a no-objection certificate. We, therefore, allow this writ petition.

8. In view of the fact the writ - petition itself has been allowed and the writ-appeal has only been filed against an interlocutory order passed by the

learned Judge granting interim direction for the issue of a no-objection certificate, to the writ petitioner, the writ appeal has to be dismissed and is

dismissed. There will, however, be no order as to costs both in the writ petition and in the writ appeal.