
(1985) 02 MAD CK 0032

In the Madras High Court

Case No : W.A. No's. 1040 of 1983 and 319 of 1984

N.R. Chinnasamy Chettiar and Another

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 12-02-1985

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Cinemas (Regulation) Act, 1955 — Section 9B

Citation : AIR 1986 Mad 168

Hon'ble Judges : V. Ramaswami, J; David Annoussamy, J

Bench : Division Bench

Advocate : P. Chidambaram, for the Appellant; N.R. Chandran, Addl. Govt. Pleader, C.S. Prakash Rao, for T.N. Ananthanayaki and D. Raju for R.D. Indrasenan, for the Respondent

Judgement

David Aninoussamy, J.—In these two appeals against two judgments by different single Judges the point for determination is the same.

Hence both of them have been argued together and are disposed of by this common judgment.

2. In W.A. No. 1040 of 1983, the facts are summarily as follows : The 4th respondent applied for the grant of "No objection certificate" to locate

a touring cinema in S. No. 71/1 in Nachanapatti village, Omalur taluk. The appellant also applied for the same grant. The applications were

preferred under R. 35 in Form A, Part II of the Tamil Nadu Cinematograph Rules. Notices inviting objections were published in the office of the

Panchayat Union, Kadayampattion 25-4-1981, and in the Salem District Gazette dt. 21-5-1981. The Collector after considering all the objections

received, preferred the 4th respondent to the appellant, whose application was rejected. An appeal was preferred to the Commissioner of Land

Administration, Madras, who confirmed the order of the Collector on 26-1-1983. On revision, the Government found that there was no ground to

interfere with the orders of the Commissioner of Land Administration. In the writ petition the appellant herein challenged the order of the

Government on merits as well as on the ground that the order of the Government does not disclose the reasons. The learned single Judge

considered all the points raised as regards the merits of the case and found that the decision of the Collector preferring the 4th respondent to the

appellant as confirmed by the appellate authority and revisional authority did not suffer from any infirmity or irregularity. As regards the second

ground he held that the revisional authority while dismissing the revision need not give reasons and added that on the perusal of the records it was

found that the Government considered the revision petition with sufficient care after calling for a report and declined to interfere, being satisfied that

there were no merits in the petition.

3. The facts relating to W.A. 319 of 1984 are summarily as follows : The 4th respondent was the beneficiary of all licence to run a touring cinema

in R.S. No, 1961/A of Kulathupalayam village, Tharapuram Taluk. That licence having expired, he applied for renewal of the licence to run the

touring cinema for a further period of three years on the same site. Objections were invited and after considering them the Collector refused to

grant C Form licence to the 4th respondent by an order dt. 15-7-1981. The 4th respondent preferred an appeal before the Commissioner of

Land Administration, Chepauk, Madras, After hearing the parties concerned, the Commissioner of Land Administration by order dt. 3-9-1981,

remanded the matter for fresh examination to verify whether the site and the building conforms to the relevant rules in every aspect. The Collector

obtained a report from the concerned Officer, inspected the site personally and after hearing the parties concerned rejected again the application of

the 4th respondent. The 4th respondent appealed for the second time before the Commissioner of Land Administration, Madras, who also

inspected the site in the presence of the counsel for the objectors and the 4th respondent as well as the owner of the site and passed a detailed

order stating that there was substantial compliance of the rule and granted the C Form licence to the 4th respondent. The appellant felt aggrieved

by that order and preferred a revision before the Government, which by its order dt. 16-2-1983, found that there was no ground to interfere. That

order was challenged by way of writ before this court on merits as well as on the point that the order of the Government was liable to be quashed

for its being a non-speaking order. The learned single Judge who heard the writ petition, after analysing all the points submitted before him, on

merits found that the order granting licence to the 4th respondent did not suffer from want of jurisdiction or any error apparent on the face of the

record making it liable to be quashed. As regards the technical ground relating to the content of the order, after reviewing the decisions on that

point by this court on earlier occasions the learned Judge came to the conclusion that the preponderance of authority was in favour of the view that

the confirming revisional order need not be a speaking order.

4. The common point raised in both the appeals is that the revisional authority exercising a quasi-judicial power should disclose the reasons in its

order and that in the absence of such disclosure the order was vitiated and was liable to be set aside for that reason.

5. The answer of the learned Additional Government Pleader is that when the revisional authority confirms the order of the appellate authority, it

need not give reasons of its own. This controversy is not a new one. It has been brought before courts several times and it will not be out of place

to review summarily the decisions of single Judges of this court and to set forth rulings of the Supreme Court on this point.

6. In W.P. 10157 of 1981, dt. 22-10-1981, a single Judge of this Court held that the revisional authority acting under S. 9-B of the Tamil Nadu

Cinemas (Regulation) Act 1955, need not give reasons in an order of affirmance. In another decision reported in G. Alagiri Vs. Collector of

Thanjavur and Others, , a single Judge of this court while dealing with a writ petition arising out of an order of revision under the Tamil Nadu

Cinemas (Regulation) Act, ruled that when there is total absence of reasons and not even reference to the reasons recorded by the appellate

authority, that disclosed total lack of application of the mind. He further held that the revisional authority should give reasons because the decision

is likely to be subject to scrutiny by High Court under Art. 226 of the Constitution. In W.P. 8394 of 1981 and W. P. No. 9508 of 1981, dt. 82-

1982 and 21-1-1983 respectively, the learned single Judge, who dealt with W.P. 5633 of 1983, out of which W.A. 1040 of 1983 now being

dealt with, arises, ruled that in case of affirmance, when the original Tribunal gives adequate reasons, the appellate Tribunal may dismiss the appeal

agreeing with those reasons. He further held that the purpose of issuing rule nisi was to have the file to be produced and that when the file disclosed

the reasons that would show that the revisional authority had exercised its power in conformity with law, though the order by itself may not disclose

the reasons and the order would be proper. It is after the review of the above decisions that the single Judge, who dealt with W.P. 1954 of 1983

out of which W.A. 319 of 1984 now being dealt with arises, came to the conclusion that the preponderance of authorities in this court was that an

order of affirmance by a revisional authority need not be a speaking order.

7. We shall now turn to the rulings of the Supreme Court on the point on issue in the chronological order. In *Madhya Pradesh Industries Ltd. Vs.*

Union of India and Others (UOI), the Supreme Court, while dealing with a writ petition arising out of an order on revision under R. 55 of the

Mineral Concession Rules, held by a majority view (two Judges) that the Central Government was not bound to give in its order full reasons for

rejecting the application. One Judge dissenting with that view observed that if tribunals can make orders without giving reasons, it may lead to

abuse of power in the hands of unscrupulous or dishonest officers. He further noted that the extent and nature of the reasons depend upon each

one and that what was essential was that reasons should be given by an appellate or revisional tribunal expressly or by reference to those given by

the original tribunal.

8. In *Bharat Raja Vs. The Union of India (UOI) and Others*, , the Supreme Court while dealing with an appeal arising out a revisional order of the

Central Government on revision against the order of the State Government under the Mines and Minerals (Regulation and Development) Act

1957, has decided that a party is entitled to know why the decision has gone against him and further observed as follows -

Both the High Court and this Court are placed under a great disadvantage if no reasons are given and the revision petition is dismissed curtly. In

such a case, this court can probably only exercise its appellate jurisdiction

satisfactorily by examining the entire records of the case and after giving a hearing come to its conclusion on the merits of the case. This would certainly be a very unsatisfactory method of dealing with the appeal"".

9. In *Som Datt Datta Vs. Union of India (UOI) and Others*, the Supreme Court held that there was no express obligation imposed by S. 164 or

by S. 165 of the Army Act, on the confirming authority or upon the Central Government to give reasons in support of its decision to confirm the

proceedings of the court-martial. The Court went further to observe that there was no force in the contention that there was any general principle

or any rule of natural justice that a statutory tribunal should always and in every case give reasons in support of its decision.

10. In the case *Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others*, , while dealing with an order of appeal subject to revision,

the court observed that -

unless reasons were given in the order, the aggrieved party had no opportunity to convince the revisional authority that the order was erroneous,

that if the aggrieved party was not supplied the reasons the right of appeal was an empty formality and that it must appear that the authority has

reached a conclusion which is according to law and just, and for ensuring that it must record the ultimate mental process leading from the dispute to

its solution"".

11. In the case *Rangnath Vs. Daulatrao and Others*, , the Supreme Court after observing that when an order is liable to be challenged under Arts.

226 and 227 of the Constitution, courts insist that an appeal ought to be disposed of by a speaking order giving reasons in its support, stated that it

might not be possible in all cases to say that a non-speaking order is bad or invalid.

12. In *The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another*, the Supreme Court has ruled

that every quasi-judicial order must be supported by reasons and added that the rule requiring reasons to be given in support of an order was a

basic principle of natural justice which must inform every quasi-judicial process and the rule must be observed in its proper spirit and that mere

pretence of compliance with it would not satisfy the requirement of law.

13. In the last case cited before us, viz, *Tara Chand Khatri Vs. Municipal*

Corporation of Delhi and Others, the Supreme Court observed as follows

While it may be necessary for a disciplinary or administrative authority exercising quasi-judicial functions to state the reasons in support of its

order if it differs from the conclusions arrived at and the recommendations made by the enquiring officer in view of the scheme of a particular

enactment or the rules made thereunder, it would be laying down the proposition a little too broadly to say that even an order of concurrence must

be supported by reasons. It cannot also be laid down as a general rule that an order is a non-speaking order simply because it is brief and not

elaborate. Every case has to be judged in the light of its own facts and circumstances.

The above review of decisions would disclose that the views of the courts in this matter have not yet crystallised as to what should be exactly the

content of a decision by a revisional authority. The common proposition which appears to emerge from the above decisions is that the reasons to

be disclosed would depend on the facts and circumstances of the case.

14. The learned Government Pleader would however persist in his contention that the revisional authority need not set forth the reasons in the

order and would place special reliance on a decision of the Supreme Court in *Sri. Raja Lakshmi Dyeing Works and Others Vs. Rangaswamy*

Chettiar, . That decision was in a matter arising under the Tamil Nadu Buildings (Lease and Rent Control) Act 1960. The provisions of S. 25 of

the Act provide that the revisional authority has to satisfy itself as to the regularity of the proceedings or correctness or legality or propriety of any

decision passed by the subordinate authorities. The provision of S. 9(b) of the Cinemas Regulation Act, providing for revision is similar to the

above said provisions of S. 25 of the Act. In that decision, the Supreme court observed as follows -

The dominant idea conveyed by the incorporation of the words to satisfy "itself" under S. 25 appears to be that the power conferred on the High

Court under S. 25 is essentially a power of superintendence.

Basing on this observation, the learned Government Pleader would contend that the Government exercising revisional power under S. 9(b) of the

Act is exercising a power of superintendence and while exercising such a power,

the revisional authority need not disclose the reasons for its orders. This contention cannot be accepted, nor the observation of the Supreme Court yields itself to such a stretched view. Under S. 9(b) of the Act, a revision by the Government can take place on their own notion or on the application. When the matter is taken up by the Government on their own motion, nobody is interested to know about the decision of affirmance. But, when the revision is effected on the application of an aggrieved party, that party is entitled to know whether the revisional authority satisfied itself and how it satisfied itself.

15. In this connection, it is worth remembering that all decisions by public bodies are vicarious ones. They are taken on behalf of the people by an authority appointed directly or indirectly by the people. So the people have a right of superintendence to satisfy themselves about the acceptability of the decision and for that purpose the reasons leading thereto should be disclosed.

16. Apart from the general public, some individuals may specifically be interested in the decision when they are susceptible of affecting their legitimate interest. Before a decision is taken they are entitled to put forth their point in order to influence the decision to their advantage and when the decision is taken, they are naturally interested to know the reasons of the decision especially if it is not to their expectation.

17. The very fabric of democracy or the Government by the people implies that all decisions of public bodies are transparent, so that the people know fully how, why and what for the decision has been taken. Such a transparency is the best guarantee that the decision has been arrived at after taking into account all the circumstances and after giving due weight to each of those circumstances and also that no external consideration nor oblique motive has been operative in the mind of the authority deciding on behalf of the people. Transparency of decision has also the advantage of shielding the decision of public bodies against unnecessary suspicion or criticism which otherwise would hang over those decisions and impair their strength.

18. Transparency of the decisions of legislative bodies is ensured by a public debate at the end of which decisions are taken. Transparency of the decisions of the judiciary is obtained by the public hearing of parties concerned

and by a reasoned order. Transparency of the decisions of the executive bodies is achieved by those decisions being open to scrutiny either by legislature or by the judiciary. In some countries executive decisions also are made directly transparent to the public and to the interested parties by the legal requirements of disclosure of reasons along with the decisions.

19. With these broad principles in mind we shall turn to the circumstances of the case. The impugned order was passed by the Government in the exercise of their power of revision, in the discharge of judicial function. Therefore, the norms of judicial process will apply to the order and the reasons have necessarily to be disclosed for the following reasons. Firstly, the interested parties should be convinced that the matter was not disposed of without application of mind and that his case has been considered in its entirety, otherwise, the relief provided in law would be illusory.

Secondly, the party is interested to know the answer of the authority to his contention in order to find out whether the matter can be taken to a

higher authority, if such answers are not found to be satisfactory. Thirdly, the knowledge of reasons is useful and necessary for the party and others

who may be in similar circumstances for their future course of action. The losing party may eventually take advantage of principle as per which his

case was rejected on a future occasion. This happens for instance very frequently in cases relating to the grant of licences under the Motor

Vehicles Act.

20. Apart from the above reasons for which reasons should be disclosed in the interest of the parties concerned, it is also to be stated that clear

disclosure of reasons in the order is necessary, since the order is susceptible of being challenged under Art. 226 before this Court. If no reasons are

disclosed, or if they are insufficiently disclosed, this Court would have to go into the whole records and this consumes its time beyond the

contemplation of the Constitution, delays the disposal of cases and impairs the over all efficiency of the system as a whole.

21. Therefore, there cannot be any doubt that in an order passed by the Government in a matter, like the present one, reasons should be disclosed.

But what would be the amount of reasons to be stated would vary from case to case. But this last principle cannot be stretched to the extreme limit

so as to say that the absence of reason would indicate that the reasons of the revisional authority in an order of affirmance are the same as those of the appellate authority. Of course, if the revision petitioner does not point out the defects of the appellate authority's order but displays nothing else than obstination in merely repeating verbatim the grounds of appeal as grounds of revision, one could consider that the absence of reasons in the confirming order of the revisional authority tantamounts to acceptance of the reasons of the appellate authority. But when the grounds of revision contain specific grounds attacking the reasoning of the appellate Court's order, those grounds have necessarily to be answered. In such a case, it cannot be said that the absence of reasons tantamounts to the acceptance of the reasons of the appellate Court even if the order is one of affirmance.

22. The last question to be examined is what is to be done when the order does not contain any reason. Though the order is judicial in nature, it is not processed through in the same manner as in a judicial forum. The Government have got their own method of working, as per which the authority vested with power of decision comes to such a decision upon the perusal of the notes prepared by the secretaries and the perusal of the records. In such a case, when the order communicated to the party does not by itself contain the reason, it is necessary to ascertain whether the reasons are not to be found in the relevant file. That is why the aggrieved party in such a case would pray the Court to call for the records relating to the decision. When the records are so called for and when it is found that no reasons are found therein, this Court would be left with no option but to set aside the order, since it has no possibility to assess the merit thereof: If on the contrary there are reasons, the Court would see whether the grounds of revision have been properly considered and whether the final decision is in accordance with that consideration. Even if this Court is satisfied that the order is unimpeachable on the basis of the reasons so discovered, one has to not, that the revision petitioner would have, however, suffered prejudice on account of the absence of reasons in the order itself. Had the reasons been present in the order, he would have got an opportunity to satisfy himself about the reasonableness of the decision. The absence of reasons caused suspicion in his mind and led him to

spend moneys in a writ petition proceedings for calling for the records. He is entitled to the relief for having been placed in such a predicament.

23. Turning now to the orders leading to the present appeals it is found that they read as follows :-

The Government have examined the revision application in the reference third cited with the connected records. They consider that there is no ground to interfere with the orders of the Commissioner for Land Administration, Madras, in the reference second cited. They accordingly reject the revision application filed by you.

It is seen that there is total absence of disclosure of reasons in the above order. Records in both the cases have been called for by the single

Judges. They have found that the reasons for the orders are available in the records in the form of elaborate notes and ultimate decision by the

Minister. Those reasons have been found acceptable by the single Judges and the present appeals are filed only on the point whether the orders

are bad on account of absence of reasons in the order. It is clear from the above that the orders are not without reasons and therefore they are not

bad. However, the absence of disclosure of the reasons in the order itself has compelled the petitioners to have the records called for and in that

process they have incurred an expenditure for which, they are entitled to compensation. We therefore, order that they may be paid each Rs. 500.

Barring this relief, the appeals are dismissed.

24. Appeals dismissed.