

(1983) 03 MAD CK 0052

In the Madras High Court

Case No : W.M.P. No's. 14097 of 1982 and 1755 of 1983 in Writ Petition No. 9383 of 1982

P. Sundararajan

APPELLANT

Vs

State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 10-03-1983

Acts Referred:

Tamil Nadu Cinemas (Regulation) Rules, 1957 — Rule 14(2)

Citation : AIR 1983 Mad 349

Hon'ble Judges : Sathiadev, J

Bench : Single Bench

Advocate : P. Chidambaram, for the Appellant; R.D. Indrasenan and N.R. Chandran, Addl. Govt. Pleader, for the Respondent

Judgement

Sathiadev, J.—Writ petitioner was issued a "C" form licence to establish a permanent theatre called, 'Rakki Theatre' in Ambattur and started exhibiting films from 24-4-1981. Petitioner claims to have spent about Rs.15 lakhs. Third respondent obtained a no objection certificate and a C form licence to establish a touring cinema for the period from 21-5-1980 to 19-4-1981 was granted, and thereafter, applied for renewal beyond 19-4-1981. Since his application was hit by R 14(2) of Tamil Nadu Cinemas(Regulation) Rules, as third respondent's touring talkies was within the prohibited distance of the petitioner's theatre, which had commenced on 24-4-1981, second respondent did not renew the licence, but granted only an "E" permit, as an indulgence, so that he may close down the cinema within reasonable time, granted by him upto 19-6-1981. On 20-6-1981 third respondent's touring cinema was stopped.

2. Petitioner was served with a notice on 19-3-1982, asking him whether he has got any objection to third respondent conducting touring cinema for the rest of the licensing period. Petitioner gave his reply on 25-3-1982, pointing out that the touring cinema is located within one kilometer from his theatre and it would spoil his business and the loan taken by him from Bank cannot be repaid, if the

touring cinema is to exist. It was only when the impugned order of first respondent granting exemption of the operation of R. 14 (2) was received, which in turn enabled third respondent to complete the 5-year period of conducting touring cinema, he realised the gravity of the situation and filed this writ petition challenging the validity of the said G.O.

3. On behalf of third respondent Mr. Indrasenan learned counsel would submit that in view of the decision of this Court in *Kailasam v. Secretary to Government of Tamil Nadu*, (1981) 2 MLJ 210: AIR 1982 noc 85, when exemption is granted by invoking Sec. 11 of the Tamil Nadu Act XX of 1955, there is no need for giving an opportunity to any third party and therefore, petitioner cannot claim that he had not been heard before the impugned order was passed. Even, if for any reason it be held that any such opportunity should be extended to an identifiably affected party, in the instant case, when petitioner's objections have been called for, he cannot state that the impugned order was passed without reference to him.

4. Before passing impugned order when first respondent had thought it necessary to ascertain the views of the petitioner who had certainly be affected by grant of exemption and who could be main party to rely on R. 14(2) the decision above referred to will have no application. On 3-3-1982, first respondent addressed the second respondent to find out from petitioner as to what objections he could have in extending the licence for third respondent. On this second respondent sent a communication on 10-3-1982, by merely making petitioner to send his views in extending the licence to third respondent for the rest of the licensing period. a copy of the petition filled by third respondent, seeking exemption was not communicated to the petitioner. The particulars gathered regarding the population of village etc., were made available. The factors which have been taken into account in the impugned order were not put to petitioner to elicit his objections, if any, and to what extent the factors being taken taken into account, would be irrelevant or incorrect. The only aspect on which petitioner was put on notice was that there was a proposal to extend the time for the rest of the licensing period. No doubt in the subject column it is mentioned that third respondent was seeking for exemption from R. 14 (2). Petitioner thus had a inkling about exemption being granted of R. 14 (2) and that was why he stated that the touring cinema in question is located within one kilometre from his theatre. But when the impugned order refers to other factors and the petitioner having not been furnished with the copy of the application made by the third respondent furnishing full version of it. It has deprived petitioner to make effective representations.

5. As held by this Court in *Shanthi Theatre (P) Ltd. v. State of Tamil Nadu* (1979) 55 FJR 389 a mere summary of the contents of a petition would not mean that a full and fair opportunity had been extended. Therefore it cannot be said that first respondent had extended an opportunity in full form when it had on its own chosen to elicit the views of the petitioner that a full and fair opportunity had not

been extended to him has to be sustained.

6. It is not only the distance aspect that has been taken into account in the impugned order but also about the audibility aspect which was never put to the petitioner and he was never called upon to state his objections on this aspect, which was a vital factor taken into account in fixing the duration of third respondent's touring cinema.

7. As for reliance placed on (1981) 2 MLJ 210: AIR 1982 NOC 85 in so far as petitioner is concerned. He cannot be characterised as a 'third party' because he is a person who as per the provisions of the Act and the Rules would be entitled to take advantage of r. 14 (2). If exemption is in respect of a rule, whose exclusion would have a direct, resultant and adverse effect on another identifiable person and when R. 14(2) would have relevance and become operative only say the existence of such a theatre then such a party cannot be characterised as a third party, but he would come within the classification of an aggrieved party.

8. Therefore, when such apparent errors have been made out, no valid ground is made out to vacate the order of interim stay, and hence, it is made absolute resulting in W.M.P.14087 of 1982 being ordered and W.M.P.1755 of 1983 being dismissed.

9. Order accordingly.